

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
AURANGABAD BENCH, AT AURANGABAD.**

Writ Petition No. 12788 of 2017

District : Beed

01. Sarubai w/o. Dnyanoba Bansode,
Age : 60 years,
Occupation : Household,
R/o. Lokhandi Sawargaon,
Taluka Ambajogai,
District Beed.
02. Anant s/o. Dnyanoba Bansode,
Age : 40 years,
Occupation : Labour,
R/o. Lokhandi Sawargaon,
Taluka Ambajogai,
District Beed.
03. Manisha w/o. Anant Bansode,
Age : 35 years,
Occupation : Labour,
R/o. Lokhandi Sawargaon,
Taluka Ambajogai,
District Beed.
04. Pintya @ Suryakant
s/o. Dnyanoba Bansode,
Age : 30 years,
Occupation : Labour,
R/o. Lokhandi Sawargaon,
Taluka Ambajogai,
District Beed.
05. Priyanka w/o. Pintya
@ Suryakant Bansode,
Age : 25 years,
Occupation : Labour,
R/o. Lokhandi Sawargaon,
Taluka Ambajogai,
District Beed.
06. Shobha d/o. Dnyanoba Bansode,
Age : 38 years,
Occupation : Household,

R/o. Lokhandi Sawargaon,
Taluka Ambajogai,
District Beed.

.. Petitioners
(Original
defendants)

versus

Satyabhama w/o. Suryabhan Bansode,
Age : 50 years,
Occupation : Household & Labour,
R/o. Lokhandi Sawargaon,
Taluka Ambajogai,
District Beed.

.. Respondent
(Original
plaintiff)

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Mr. Nitin L. Dhobale, Advocate, for petitioners.

*Mr. Vivek V. Bhavthankar, Advocate, for the
respondent.*

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 29TH NOVEMBER 2017

ORAL ORDER :

01. Taken up for hearing with the consent of both the parties at admission stage.

02. The petitioners are original defendants. The respondent - original plaintiff has filed Regular Civil Suit No. 06 of 2015 for injunction. It has been contended by the plaintiff, that she is the occupant of house no. 96 admeasuring 30 feet south-west and 27.6 feet south-north. In the said property, construction of a structure is admeasuring 10 X 10 feet. Rest of the area is open. She got the said premises from Government in 1980 under Indira

Awasi Yojana. The defendants are occupants of house no. 116 which is towards south of the open space of the plaintiff. The plaintiff further contends that in order to harass her, the defendants started construction of a cement wall so as to obstruct her road. She has specifically contended that she has no alternate road to go to her house. She has, therefore, filed the suit and by way of interim relief, she had prayed for demolition of the wall which was till then 2 feet broad, 2 feet in height and 28 feet in length.

03. The defendants filed written statement and denied that the construction of the wall is in any way obstructing the road of the plaintiff. It has been contended that the property was purchased by Dnyanoba Bansode and defendants had inherited the same after the death of Dnyanoba Bansode. Whatever construction is made by them is within the property that has been allotted to them i.e. house no.116.

04. Taking into consideration the contentions of both the parties and upon hearing them, the learned trial court allowed the application Exhibit 05 and directed the defendants to remove construction of the suit wall. The matter was challenged by the defendants in Misc. Civil Appeal No. 16 of 2015 before learned District Judge-2, Ambajogai. The said appeal came to be dismissed on 06.10.2017. Hence, the present petition.

05. It has been submitted on behalf of the petitioners, that the construction of the wall is in no way obstructing the road of the plaintiff. In fact, the situation is now different at the said place. The plaintiff has alternate road to go to her properties and, therefore, both the courts below erred in giving the directions.

06. Per contra, it has been submitted that during the course of the appeal, court commissioner was appointed and the site was inspected. The report of the court commissioner has been filed at Exhibit 23 in the Misc. Civil Appeal. It specifically states that there is no alternate road available for the plaintiff. The defendants had not taken any permission from the local authority in order to erect the wall and, therefore, both the courts below have rightly directed the defendants to demolish the wall.

07. It can be seen that the matter is at *prima facie* stage and, therefore, whatever documents have been produced on record by the parties will have to be considered *prima facie*. It appears from the contents of the written statement, that the defendants are making construction. According to them, it is in their own plot i.e. house no. 116. However, even to support this contention, it appears that they had not filed any document in the form of permission obtained from the Grampanchayat. Furthermore, photographs were produced by the plaintiff before the trial court showing that the way

has been obstructed. The question was whether there is any alternate road available to the plaintiff and that point has been set at rest. The learned District Judge had appointed court commissioner. The court commissioner submitted his report wherein there is a clear finding that the said construction is blocking the way of the plaintiff to her house and she has no alternate road. When such clear finding at this *prima facie* stage has come on record, there is no reason to interfere with the finding arrived at and also the discretion that has been used by the courts below. When there is concurrent finding in respect of facts, though at *prima facie* stage, this cannot be a fit case where the writ jurisdiction of this Court should be invoked.

08. I do not find any merit in the present petition. The writ petition is accordingly dismissed.

(Smt. Vibha Kankanwadi)
JUDGE

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