

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 2964 OF 2017**

Sanjay Maruti Patil & Anr.] Petitioners

Vs.

Sarpanch, Grampanchayat Bhadwan]
Tal. Ajara, Dist. Kolhapur & Ors.] Respondents

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Mr. Datta H. Pawar, Advocate for the petitioner.
Mr. Saurabh S. Kurade for respondent Nos. 3 to 8.

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CORAM : R.G. KETKAR, J.

DATE : 23rd MARCH, 2017

P.C.

Heard Mr. Datta Pawar, learned Counsel for the petitioners and Mr. Saurabh Kurade, learned Counsel for respondent Nos. 3 to 8, at length. On the oral application made by Mr. Pawar, leave to delete rest of the respondents is granted as plaintiffs are seeking relief only against defendant Nos. 3 to 8. Amendment to be carried out forthwith.

2. By this petition under Article 227 of the Constitution of India, the petitioners, hereinafter referred to as 'plaintiffs' have challenged the judgment and order dated 26th October, 2016 passed by the learned Civil Judge, Junior Division, Ajara below Exhibit 5 as also order dated 17th February, 2017 passed by the learned District Judge-I Gadhinglaj passed in M.C.A No. 49 of 2016. By these orders, the Courts below rejected the application made by the plaintiffs for injunction restraining respondent Nos. 3 to 8 from making any construction over City survey No. 782 and 783 of Village Bhadwan, Taluka Ajara, Dist. Kolhapur.

3. Rule. Mr. Kurade waives service. Having regard to the narrow controversy raised in this petition as also at the request and by consent of the parties, Rule is made returnable forthwith and the petition is taken up for final hearing.

4. Mr. Pawar submitted that defendant Nos. 3 to 8 have not obtained permission from the Competent Authority and without any permission they have proceeded with the construction. The Courts below were, therefore, not justified in rejecting the application. In fact, the Courts below observed that defendant Nos.

3 to 8 have obtained permission from the District Sports Officer, Kolhapur for construction of the gymkhana and temple. He submitted that District Sports Officer is not the Competent Authority to consider and grant the building permission.

5. Mr. Kurade supported the impugned orders. He states that one of the Directors of respondent No.3 Anand D. Sankpal is present in the Court. He has tendered photo copy of his PAN card, which is taken on record and marked as "X" for identification. Upon taking instructions from him, Mr. Kurade submits that impugned orders may be set aside and ad-interim order restraining defendant Nos. 3 to 8 from carrying out further construction on Survey No. 282 and 283 may be granted. He further submitted that pending the proceedings, the defendants may be permitted to submit proposal for regularization of the construction carried out by them to the Competent Authority.

6. In view thereof, by consent of the parties, impugned orders are set aside. Application Exhibit 5 is restored to file of the trial Court. Pending application, Exhibit-5 there shall be ad-interim order restraining the defendants from carrying out further

construction over City Survey No. 782 and 783. Defendants No. 3 to 8 are at liberty to file proposal for regularization of the construction in accordance with law made by them before the Competent Authority. Pendency of the suit or application Exhibit-5 will not preclude the concerned Authority from considering the application for regularization of the construction. All the contentions of the parties on merits are kept open. Rule is made absolute in aforesaid terms. Order accordingly.

[R.G. KETKAR, J.]