

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 4845 OF 2017

Ramdas Arjun Chaudhari ... Petitioner
VS.
Laxman Arjun Chaudhari & Ors. ... Respondents

Mr. Venkatesh A. Shastry, Advocate for the petitioner.
Mr. Rompal S. Kohli a/w. Vikram Chavan, Sonia Redkar i/b. C.K.
Legal, Advocate for respondent no. 5.
Mr. Sanjay P. Shinde, Advocate for respondent nos. 1 to 4.

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE: **3rd May, 2017.**

P.C.:

This matter is taken on circulation.

2. Today all the parties are before the Court. Heard the learned counsel for the parties for sometime. Considering the issues involved and the submissions made by the learned counsel for the parties, it appears that it will take sometime to decide the matter on merits. Hence, order, as a stop gap arrangement, is required to be passed.

3. The order of status quo earlier was granted by the learned trial Court on 12th January, 2017 in Exhibit 5 in Regular Civil Suit No. 58

of 2017 was in continuation till 21st April, 2017. Therefore, this Court on 21st April, 2017 directed the parties to maintain status quo without hearing the learned counsel for the respondent nos. 1 to 4. Today, after hearing the learned counsel for respondent nos. 1 to 4, it is made clear that earlier order of status quo granted by the trial Court was only in respect of Gat No. 100 and not pertaining to Gat No. 68. Thus, the order of granted by this Court, being the continuation of the earlier order of status quo is in respect of only Gat No. 100 and not qua Gat No. 68.

4. However, the fact that the petitioner has sold 22R of land to respondent no. 5, who is running a cement factory. It appears that a small portion of land is required to lay railway track and permission for which is already obtained from the railway authorities and other competent authorities. From the photographs, it appears that *prima facie* laying railway line work is in progress. For the purpose of this railway line, total area of 6R is going to be used from the disputed property of 22R. A sketch disclosing the railway track which is produced by respondent no. 5 is taken on record and marked as Exhibit-1. The sketch gives clear idea about the land which is going to be occupied under the railway track. Therefore, the following

order is passed:

- (i) The order of status quo though was passed, is hereby vacated;
- (ii) Respondent no. 5 may lay the railway track from the disputed suit land which is the subject to decision of this Petition;
- (iii) The respondent no. 5 shall not create third party right in the disputed suit property.

5. At this stage, after dictation of this order, the learned counsel, on instructions from the petitioner who is present personally in the Court, seeks permission to withdraw this Petition.

6. The learned counsel for the petitioner is allowed to withdraw this Writ Petition.

7. Writ Petition is disposed of as withdrawn.

8. After passing this order, the learned counsel Mr. Shastri for the petitioner submitted that the Court to delete the earlier portion of the order and simplicitor to take that the permission is sought to withdraw

this Petition because the observations made by this Court will come in the way of the petitioner before the District Court or the trial Court.

9. Heard the submissions of the learned counsel for the petitioner. I am of the view that the observations made by this Court will not come in the way of the petitioner because the Courts below are always expected to decide the matter on merits and the learned trial Court is aware of it.

(MRIDULA BHATKAR, J.)