

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

**WRIT PETITION No. 7008 OF 2017
WITH
WRIT PETITION NO. 7016 OF 2017**

Smt. Kamalabai Laxman Damodar & Ors. ... Petitioners
Vs.
Kailas Mahadeo Sasane & Ors. ... Respondents

Mr. Dushyant S. Pagare, Advocate for the petitioners in both the petitions.

Mr. Nitin Mulye, Advocate for respondent No. 1 in both the Writ Petitions.

CORAM: MRS.MRIDULA BHATKAR, J.
DATE: 1st July, 2017.

P.C.:

Rule. Rule made returnable forthwith. By consent, the Writ Petitions are heard finally and decided at the stage of admission.

2. In these Writ Petitions, the order dated 29th April, 2017 passed by the learned District Judge-2, Nashik in Civil Miscellaneous Appeal Nos. 9 of 2017 and 10 of 2017 thereby confirming the order dated 16th January, 2017 passed by the 4th Joint Civil Judge Senior Division, Nashik on Application below Exhibit 5 and Application below Exhibit 21 in Regular Civil Suit No. 562 of 2014 are challenged. Respondent no. 1 is the original plaintiff, who has filed the suit for

perpetual injunction that the defendants/petitioners shall not obstruct his possession on the suit plot and shall not obstruct him in constructing the compound wall around his plot. In the said suit, the defendants/petitioners have filed the Application Exhibit 21 seeking permission to allow the drainage line and also praying not to disturb his right of way through the plot of plaintiff going towards his residence and the wall to obstruct his right of way is not to be constructed. The learned trial Judge decided the said Applications by common order and allowed the Application Exhibit 5 and rejected Application Exhibit 21. Against this, Civil Appeal Nos. 9 of 2017 and 10 of 2017 were filed by the petitioners. The said Civil Appeals were dismissed with direction that the trial Court to decide the Appeals expeditiously by a common order.

3. Today, when these petitions came up for hearing, both the parties produced photographs of their respective properties. The learned counsel for the respondent/original plaintiff made a statement that the wall for which the relief was sought for is constructed and complete and therefore, nothing remains in Writ Petition No. 7008 of 2017. The learned counsel for respondent no. 1 further submitted that the drainage pipeline is already laid by the petitioners. Thus, to

that extent, nothing survives in the Writ Petition.

3. The learned counsel for the petitioners confirms that the compound wall is constructed by the respondent/original plaintiff and the petitioners have already laid the drainage pipeline, however, he submitted that the challenge of right to his way is open. He submitted that there is no other way or access for him to go to the petitioners residence and the only access available to them is through the plot of respondent no. 1/original plaintiff. He showed the photographs where the family members of the petitioners are climbing the wall to go to his residence. It is informed by the learned counsel for the petitioners that the road is constructed not by the Corporation but by the Corporator.

3. Heard the learned counsel for both the parties. The learned counsel for the petitioners showed the photograph where the family members of the petitioners are climbing the wall to go to their residence. However, there is another photograph which shows that a small road coming from the compound wall of the house of the petitioner is touching the main road and it appears a concrete road. It is informed by the learned counsel for the petitioners that the said

road is not approved road by the Corporation but the said road is made by one Corporator. However, it appears that the public at large is using the said road. Thus, it appears that some access is available to the petitioners. Which road is made available to the petitioners as per the approved lay out and plan by the Corporation is a matter of evidence and accordingly the petitioners will have to tender evidence through them or through Corporation in respect of the approved layout disclosing his approach road. Hence, no interference is required in the order dated 29th April, 2017 passed by the District Judge, Nashik. No relief can be granted at this stage. The order of the District Court is hereby maintained. Writ Petitions are dismissed. The trial Court to expedite the matter at the earliest. Parties to cooperate the trial Court.

(MRIDULA BHATKAR, J.)