

pmw

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.9918 OF 2016**

SI Group India Private Limited	... Petitioner
Vs.	
The Tehsildar, Rasal – Sudhagad and Ors.	... Respondents

**WITH
CIVIL APPLICATION NO.775 OF 2017**

Vishwanath Vithal Telange	... Applicant
<u>In the matter between</u>	
SI Group India Private Limited	... Petitioner
Vs.	
The Tehsildar, Rasal – Sudhagad and Ors.	... Respondents

Mr. Virag Tulzapulkar, Senior Counsel a/w Mr. R.H. Daulat, Ms. Priyanka Ravindran and Ms. Prakruti Joshi i/by Doijode Associates for the Petitioner.

Mr. Manish Pabale, AGP for the Respondent Nos.1 and 2.

Ms. Sandhya Mailagir i/by Mr. Anil D. Patil for the Respondent No.3 in WP and for Applicant in CAW.

**CORAM : A.S. OKA &
A.K. MENON, JJ.**

DATE : 29th MARCH, 2017

PC.

1 When Civil Application No.775 of 2017 was listed day before yesterday, we directed that the Writ Petition shall be placed today and will be taken up for final disposal.

2 The challenge in this Petition under Article 226 of the Constitution of India is to the order/notice dated 24th May, 2016 issued by the Tahsildar of Taluka Sudhagad to the Director of the Petitioner-Company. It records that the third respondent has filed a complaint alleging that the petitioner company has encroached upon the land bearing survey No.148/1 of village Rasal held by him. It is stated in the impugned notice that the Deputy Director of land records Sudhagad - Pali carried out survey and measurement for fixing the boundary of the land bearing survey No.148/1. It is alleged that the petitioner - Company has encroached upon the said land. It is stated that at the time of survey, the representative of the petitioner - Company was present and therefore, the survey has been accepted by the petitioner. By the said notice, the Director of the petitioner was called upon to remove construction carried out on the land held by the third respondent and to hand over possession thereof to the third respondent failing which action under Section 45 of the Maharashtra Land Revenue Code, 1966 shall be initiated.

3 It is the case made out by the petitioner that the third respondent misrepresented that he has been permitted to erect barbed wire fencing. It is alleged that the third respondent not only fixed

barbed wire fencing outside the gate installed by the petitioner but also on the gate and inside the gate thereby completely blocking and obstructing and preventing the use of the said gate by the petitioner.

4 On 27th September, 2016 a Division Bench of this Bench granted ad-interim relief in terms of prayer clauses (b) and (c) of the Petition which included a direction to the respondents to remove the barbed wire fencing and other obstructions put up outside the petitioner's gate.

5 We may note here that now there is no dispute between the petitioner and the third respondent that the barbed wire fencing about which the petitioner had complained has been completely removed. There is an affidavit filed by the first respondent Tahsildar of Taluka Sudhagad in which it is alleged that the petitioner's representative has accepted that the petitioner has carried out encroachment on the land of the third respondent.

6 The learned counsel appearing for the third respondent does not dispute that the barbed wire fencing erected by the third respondent has been removed. She submits that an application for interim relief is already made by the third respondent in Regular Civil

Suit No.46 of 2017 filed by the third respondent and others in the Court of Civil Judge, Senior Division, Alibaug. Her submission is that the hearing of the interim application may be expedited and in the meanwhile, a direction be issued to the petitioner not to carry out encroachment.

7 After having heard the learned counsel appearing for the parties we find that the direction given by the Tahsildar to the petitioner to remove the alleged encroachment made on the land bearing survey No.148/1 allegedly held by the third respondent and to place the third respondent in possession of the alleged encroached portion is completely illegal. No such power is vested in the State Government under the Maharashtra Land Revenue Code, 1966. There is no power vested in the Revenue Authorities under the said Code to remove encroachment on a private property. Only a Civil Court could have issued such a direction. The impugned notice proceeds on the assumption that the third respondent is the owner of the land bearing survey No.148/1 and that the petitioner has encroached upon it. We may note here that on 15th February, 2017 the Civil Suit for removal of encroachment allegedly made by the petitioner has been already filed by the third respondent and others.

8 The third respondent will have to establish before the Civil Court that the petitioner has carried out encroachment as alleged by him.

9 It appears that it is only on the basis of the impugned order that the third respondent was allowed to erect barbed wire fencing. Now, fencing does not exist. Needless to add that if the third respondent wants to make fencing, it is for him to take out appropriate application for interim relief in the pending suit.

10 As regards the contention of the third respondent that the petitioner be prevented from carrying out encroachment, the third respondent can always seek appropriate interim relief in the pending suit if the third respondent apprehends any act of encroachment on the part of the petitioner.

11 Hence, we dispose of the Petition by passing the following order :-

ORDER

- (i) The impugned notice/ order dated 24th May, 2016 is hereby quashed and set aside;

- (ii) The issue of legality and validity of the survey and measurement carried out by the Survey Officer at the instance of the third respondent is kept open. The issue whether the third respondent is the owner of the land bearing Survey No.148/1 and whether the petitioner has encroached upon any part of the said land is also kept open;
- (iii) We make it clear that we have made no adjudication on the merits of the pending suit filed by the third respondent and others and all contentions raised therein are kept open;
- (iv) Notwithstanding this order, the Civil Court will proceed to decide the application for interim relief as well as impugned suit in accordance with law on its own merits;
- (v) The Petition is disposed of on above terms;
- (vi) Pending applications do not survive and the same are disposed of.

(A.K. MENON, J)

(A.S. OKA, J)