

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4002 OF 2017

Mr. Ajit Shantilal Shah & Ors.

...Petitioners.

Versus

Mr. Mahamantra Construction through
its partner Mr. Manoj Sampatlal Nahar & Ors.

...Respondents

.....

Mr. Tanaji Mhatugade for the Petitioners.
Mr. Drupad S. Patil for Respondent No.1.

.....

CORAM: Mrs. MRIDULA BHATKAR, J.

DATED: APRIL 11, 2017

P.C. :

1. Rule. Rule made returnable forthwith. By consent, the matter is heard finally.

2. In this Writ Petition, the order dated 14th June 2016 passed by the learned District Judge-4 Satara quashing and setting aside the order of the trial Court restraining defendant nos. 1 to 4 from making construction leaving 10 ft. open space towards southern side CTS No. 842 is under challenge.

3. The petitioners had filed the Suit for a declaration and injunction in relation to the easementary rights of the plaintiffs i.e air and light.

The trial Court by order dated 18th February 2016 has granted interim injunction that defendant nos. 1 to 4 i.e. respondents shall not construct for 10 ft. from the southern boundary and so also shall not attempt construction of a gutter, which is northern side between the plaintiffs and building of the defendants and also directed that the defendants i.e. respondents to remove the obstacle of CTS No. 842 and clear the access.

4. The learned counsel for the petitioners submits that the respondents have illegally constructed the building without obtaining requisite permission from the Competent Authority i.e. Gram Panchayat and Zilla Parishad. He further submits the permission obtained by defendant nos. 1 to 4 i.e. respondents of the Collector or SDO is illegal. He further submits that had the permission from the Competent Authority would have been obtained, then that authority would not have sanctioned a plan which is illegal and the compulsory open space of 10 ft. would have been left out by the defendants at the time of construction of their buildings. He further submits that the southern portion of the said building is required to be demolished and he makes an alternate prayer that in the southern portion of the said building, the defendants/ respondents be restrained from creating third party rights. He further submits that the petitioners had filed the Suit to protect their

easementary rights of air and light, which is completely violated and obstructed because of ongoing construction of building of the respondents.

5. The learned counsel for the respondents submits that there is no such prayer of not to create third party interest either in the plaint or in the application below Exhibit 5. He further submits that no stay was granted earlier in the original Suit and therefore, the building is fully constructed. He further submits that the respondents have obtained permission from the Competent Authority i.e. SDO, who is empowered to approve the plan and gave sanction to construct the building by delegation of powers through the Collector. He relies on the GR of the Government, where the Collector was empowered to take such decision in cases where there is a transition of the administration from Gram Panchayat to Nagar Parishad and the village Lonand at the relevant time was coming under that phase. He further submits that the petitioners have filed the Petition No. 9742 of 2016 is pending before the Division Bench of this Court. He has also produced the photographs of fully constructed building, which are taken on record and marked 'X' and 'X-1' for identification.

6. Heard submissions. Perused the relevant orders of the trial Court and also the District Court. The photographs of fully constructed building are produced before me. The photographs disclose that space around 3 to 4 ft. only was left between two buildings. Why such permission was given by SDO to construct the building and whether he has authority to give such permission is a subject matter in the Writ Petition pending before the Division Bench. Moreover, I am informed by the learned counsel for the petitioners that the petitioners is given liberty to move application before the trial Court challenging the issue. Therefore, this Court will not go in to that aspect. I have perused the prayers of the application below Exhibit 5 and also the prayers in the plaint. No such prayer of restraining the defendants from creating third party interest in the newly constructed building is made in the plaint. Hence, the said prayer cannot be granted at this stage and the prayer that the respondent not to construct is also become infructuous as the building already constructed. Moreover, the learned trial Judge has granted relief by allowing prayer of gutter/ drainage which is asked for repair by the petitioners and also directed to remove tin sheds and make access clear. I am informed by the learned counsel for the respondents that they have complied with both the orders. In view of this, no further orders can be granted in this petition. However, it is made clear

that the issue of easementary rights of the petitioners and objection to the validity of the permission or sanction of building plan are kept open before the trial Court. Hence, the Writ Petition is dismissed. Rule is discharged.

(MRIDULA BHATKAR, J.)