

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.1976 OF 2017

Umesh Shivappa Jadhav & Ors.

...Petitioners

Versus

Yuvraj Laxman Jadhav & Ors.

...Respondents

.....

Mr.Sanjiv A. Sawant for the Petitioners.

Mr.Varad Deore for Respondent No.1.

Mr. I.M. Khairdi for Respondent No.3.

.....

CORAM: Mrs.MRIDULA BHATKAR, J.

DATED: JULY 31, 2017

P.C. :

1. Rule. Rule made returnable forthwith. By consent, petition is heard finally and disposed of at the stage of admission.
2. This petition is directed against the order dated 24.11.2016 passed by the learned District Judge-1, Solapur, in Civil Misc. Appeal No. 165 of 2015.
3. Respondent no.1 i.e. the original plaintiff, has filed a Regular Civil Suit No. 221 of 2013 for permanent and mandatory injunction that the petitioners/defendants should not interfere and obstruct his access road

and the petitioners/defendants be directed to remove their unauthorized construction, which is on the access road of respondent no. 1/ original plaintiff. Respondent no.1/ original plaintiff moved an application below Exhibit 5 under Order 39 Rules 1 and 2 of the Code of Civil Procedure, 1908 wherein he prayed for injunction that his access road is not to be disturbed and not to be obstructed by the petitioners/defendants so also ongoing construction by the petitioners/defendants is directed to be stopped. The said application was opposed by the petitioners/defendants and the petitioners have denied that they have carried out unauthorized construction of the house on their plots. After hearing the parties, the trial Court allowed the application below Exhibit-5 of respondent no.1/ original plaintiff and granted injunction.

4. It is submitted that already two rounds of the litigations upto the High Court have taken place and this is a third Writ Petition, wherein the order dated 21.10.2015 passed by the learned 3rd Jt. Civil Judge, Senior Division, Solapur allowing the application below Exhibit 63 and rejecting the application below Exhibit 5 was reversed by the District Judge, Solapur is challenged. The learned District Judge, Solapur by order dated 24.11.2016 has allowed the appeal filed by respondent no.1/original plaintiff and set aside the order passed by the trial Court

below Exhibit 63 and again confirmed the order passed by trial Court below Exhibit 5. Hence, this Writ Petition.

5. The learned counsel for the petitioners has submitted that they have started construction of the house on their plots. He has further submitted that plot no. 4B is not in existence and unnecessarily confusion is created in respect of plot no. 4B. The original plaintiff has encroached upon common municipal road and because of unauthorized construction, the access road is decreased. He has further submitted that the petitioners are constructing houses as per permission given by the Municipal Council and ongoing construction is stopped because of the order passed by the learned District Judge, Solapur. He has further submitted that if some portion of the construction is assumed without permission, then as per the rules and regulations of the Municipal Council, the petitioners/defendants have remedy to get the said construction regularized. He has further submitted that the construction is stopped and, therefore, the petitioners/defendants have suffered from irreparable loss. He has prayed that the stay granted by the learned District Judge, Solapur against the petitioners/defendants is to be vacated.

6. The learned counsel for respondent no.1 has submitted that due to construction of the petitioners/original defendants, his access is obstructed. He has further submitted that respondent no.1/plaintiff has no proper access to go to his house and therefore, the order passed by the learned District Judge is to be upheld. He has invited my attention to the report of the Municipal Council. He has further submitted that as per the report of the Municipal Council, the petitioners are carried out unauthorized construction, which is beyond permissible construction. He has relied on the said report. He has pointed out the photographs of house of respondent no.1/ original plaintiff and ongoing construction. The photographs revealed that because of unauthorized construction of the petitioners/defendants, the access to the house of respondent no.1/ original plaintiff has been reduced and, therefore, the order passed by the learned District Judge is to be maintained and the petitioners/defendants are to be directed to remove unauthorized construction.

7. The learned counsel for respondent no.3 – Municipal Council has relied on the report dated 24.10.2016 given by Shri S.M. Avtade, Assistant Engineer and Mr. N.N.Babar, Surveyor.

8. Heard submissions, Perused Report and the application below Exhibit 5 of respondent no.1/ original plaintiff. I am of the view that the report submitted by the Municipal Council in respect of permissible construction and unauthorized construction is to be wholly relied. The report submitted by the Municipal Council pertains to both the plots. Plot No. 18 belongs to respondent no. 1/original plaintiff and plot no. 4 belongs to petitioner no.1/original defendant no.1. So far as, Exhibit 5 is concerned, the report in respect of plot no. 4 is to be looked into, which states that the Municipal Council has given permission as per Survey No. 46 dated 11.04.2014 and has allowed to construct upto 9.23 meters X 3.82 meters, which comes approximately 380 sq.ft. The Surveyor has physically taken the measurement carried out by the petitioners/defendants, it was found that 9 meters X 9.74 meters, which comes approximately 940 sq.ft. Thus, it is more than permissible construction. In the report, the concerned Officers have concluded that the construction carried out by the petitioners/defendants is more than approved plan and it is unauthorized.

9. In view of the above, the order passed by the learned District Judge dated 24.11.2016 is hereby confirmed with following modification which is as follow:

- (i) The petitioners i.e. original defendants are allowed to construct as per permission granted by the Municipal Council. They should restrict the construction within permissible limit as per report dated 11.04.2014.

10. The learned counsel for respondent no.1 prayed for mandatory relief.

11. The mandatory relief cannot be granted, as it is not prayed in the application below Exhibit -5.

12. Parties are free to take steps in respect of unauthorized construction.

13. Writ Petition is disposed of accordingly.

(MRIDULA BHATKAR, J.)