

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 8630 OF 2017

**RAMESH SHAMRAO PATIL AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

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Advocate for the Petitioners : Shri S. S. Kazi
AGP for Respondent Nos. 1 and 3 : Shri S. K. Tambe
Advocate for Respondent No. 2 : Shri H. P. Kshirsagar
Advocate for Respondent No.4 : Shri Paresh B. Patil

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**CORAM : RAVINDRA V. GHUGE, J.
DATED : 7th AUGUST, 2018.**

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PER COURT :

1. The petitioners are aggrieved by the impugned orders of the Trial Court as well as the Appellate Court dated 11/01/2017 and 03/05/2017, respectively by which, both the Courts have refused injunction to the petitioners- plaintiffs.

2. It is vehemently submitted that both the impugned orders are perverse and erroneous. Grievance is that a water tank was being sought to be constructed by the State authorities by way of a public project. The lay-out for the said water tank was a portion of about 540 sq. mtr. in Gut No.2. Several encroachment occurred on the said property. The

plaintiffs and several residents protested. The Government took a decision to select the space in gut No. 2 over an area admeasuring 510 sq. ft. instead of the earlier earmarked gut No. 256. The modified order was passed by the District Collector, Jalgaon on 21/09/2016 and the construction of the tank commenced over the land admittedly belonging to the Government.

3. Grievance of the petitioners is that their houses are located in the surrounding area, where the water tank is being erected/constructed and therefore, they have an apprehension of damage to life and property. Further contention of the petitioners is that they are saving the Government land by opposing this public project and, therefore, have filed the suit for seeking perpetual injunction against the Government from erecting a public project in the Government land.

4. The learned Advocates appearing on behalf of respondent Nos. 2 and 4, submit that this petitioner No. 1 has illegally occupied the open space belonging to the Government in gut No. 2 for parking his various tractors, thresher machines

and for storing his construction materials/equipments. He claims to be a contractor and the land, which is a public place belonging to the Government, is used for his personal purposes. The intention behind filing the suit is to stall a public project and gradually grab the Government land. It is a pretence that the petitioner is concerned about saving the Government land.

5. I have considered the detailed findings of the Trial Court as well as the Appellate Court which has refused injunction to these petitioners. The petitioners admit that the land at issue belongs to the Government. When called upon to state as to which of their rights are impinged by this public project, the petitioners had no answer.

6. When this Court expressed a view that costs needs to be imposed as these petitioners have stalled a public project for 2 years and have unnecessarily consumed the time of this Court in this vexatious litigation, reliance is placed upon Section 35-A of the Code of Civil Procedure contending that the costs should not be awarded.

7. I find that these petitioners have been instrumental in stalling a public project, which was meant for erecting the water storage tank for supplying drinking water to the residents of the area, for self-serving purposes.

8. The Honourable Apex Court in the matter of *Shiv Kumar Chadha Vs. Municipal Corporation of Delhi and others (Group cases) (1993) 3 Supreme Court Cases 161* has concluded that the grant of ex parte injunction is based on discretion of the Court to be exercised ex debito justitiae. Injunction should not have the effect of perpetuating wrong committed by the party seeking it.

9. In *Mahadeo Savlaram Shelke and others Vs. Pune Municipal Corporation and another, (1995) 3 Supreme Court Cases 33*, the Honourable Apex Court concluded that while granting an injunction under Order 39 Rule 1 of the CPC for restraining execution of any public project, Court must consider the likely impact upon the public purpose.

10. The learned Advocate for respondent Nos. 2, 4 and the learned AGP on behalf of respondent Nos. 1 and 3 submit that costs need to be awarded as these petitioners have attempted to stall a public project and the said amount be donated to the treatment of the poor patients.

11. Considering the above, this petition is dismissed by imposing costs of Rs. 5,000/- (Rs. Five Thousand only) on each of these four petitioners, which they shall pay as donation for the Government Medical College and Hospital, Aurangabad, to be deposited with the Medical Officer, High Court Dispensary, Aurangabad, either in cash or by Demand Draft, to be drawn in the name of "Dean, Government Medical College and Hospital, Aurangabad - CSR Fund", on or before 30/08/2018. Receipt of such deposit shall be produced before the Trial Court in RCS No. 97/2016, failing which, the said amount of costs would be recovered from these petitioners as arrears of land revenue.

(RAVINDRA V. GHUGE, J.)

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