

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7207 OF 2016

JAYWANTRAO UTTAMRAO THAKARE AND OTHERS
VERSUS
BAPUSAHEB BABURAO BHOSLE

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Advocate for Petitioners : Shri Shah P.M., Sr. Adv.
i/b Shri Shah S.P.
Advocate for Respondent 1 : Shri Dixit V.J., Sr. Adv.
i/b Shri Shirsat S.R. and Shri Kingaonkar N.Y.
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CORAM : RAVINDRA V. GHUGE, J.
Dated: January 16, 2018
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PER COURT :-

1. This matter was heard at length over a period of almost two hours, before lunch recess.

2. Post lunch, the learned Advocate for the petitioners has tendered a purshis dated 16.1.2018 on specific instructions from the petitioners, which reads as under:-

" The petitioners state and submit that the development of the superstructure on the suit property is in progress.

In the event the petitioners ultimately fail to succeed in this litigation, the petitioners would not claim any equities on the ground that the petitioners have made the development on the property."

3. The said purshis is taken on record and marked Exhibit "X" for identification.

4. Considering all the contentions of the litigating sides as well as the issue as to whether the petitioners have a valid permission to carry out construction in the suit property admeasuring 29 Ares as per the map placed on record at page No.94 of the petition paper book and the blue print, which is tendered across the Bar, I called upon the learned counsel for the petitioners to make a statement as to whether, the petitioners would submit an affidavit / undertaking in this Court as well as the trial Court before whom RCS No. 5 of 2014 is pending, thereby declaring that if the petitioners fail in the pending litigation and the litigation connected thereto, they would hand over the structures erected by them to the succeeding parties. Learned counsel for the petitioners submits on instructions that such an undertaking would be filed.

5. Learned counsel for the respondents/ plaintiffs submits that if an affidavit / undertaking is tendered to this Court as well as the trial Court, the petitioners may continue with the construction at their own risk and they would surrender the same to the succeeding party in the litigation.

6. This Court had granted ad-interim relief in terms of prayer clause (C) on 7.7.2016, with the further direction that neither of the parties would carry out any activity which would deteriorate the situation.

7. Considering the statements made by the learned Advocates as have been recorded, this petition is disposed off with the following directions:-

(A) The Blue Print of the sketch at page No.94, is taken on record and marked as Exhibit "Y" for identification.

(B) The purshis Exhibit "X" would amount to the petitioners having made a statement to the Court.

(C) The petitioners shall tender an affidavit / undertaking to this Court as well as before the trial Court within a period of ten days declaring in unequivocal terms that if the petitioners fail in the litigation between the litigating sides, they would handover the suit property / the structures erected thereon to the succeeding party, within a period of 120 days.

(D) RCS No. 5 of 2014 shall be decided by the trial Court as expeditiously as possible and preferably on/or before 31.7.2018.

(E) The litigating sides shall extend cooperation to the trial Court for the expeditious disposal of the suit and the trial Court would be at liberty to refuse adjournments if they are sought on unreasonable or trivial grounds.

(F) These observations / directions shall not mean that this Court has permitted the petitioners to erect the construction de-hors any permission, which is required to be obtained from the competent authority.

(G) All contentions of the respective sides are left open for the trial Court to consider.

(RAVINDRA V. GHUGE, J.)

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