

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.12266 OF 2017
(Meena Dhananjay Gaikwad Vs. Subhash Ganpati Kolhe and
another)

WITH
WRIT PETITION NO.12267 OF 2017
(Dhananjay s/o Vitthalrao Gaikwad Vs. Namdeo Sambhaji Bachpalle
and another)

Mr.R.S.Deshmukh, Advocate for the petitioners.
Mr.A.H.Kasliwal, Advocate for respondent No.1.
Mr.S.K.Tambe, AGP for respondent No.2.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 04/06/2018

PER COURT :

1. In both the identically placed petitions, the petitioners have put forth prayer clause "C" and "D", which read as under :-

"Prayer clause "C" and "D" in WP No.12266/2017 :- [C] Rule may kindly be made absolute by allowing the writ petition, thereby quashing and setting aside the impugned common order dated 17/07/2017 (Annexure - 'C' collectively) passed by the learned Incharge 5th Joint Civil Judge, Junior Division, Latur, below Exhibit -1 in Civil Misc.Application No.08/2017, whereby the Applications (Exhibits - 01 and 09) came to be rejected.

[D] Rule may kindly be made absolute by allowing the writ petition, thereby granting/allowing Applications (Exhibits - 01 and 09) in Civil Misc. Application No.08/2017 before the Learned

Incharge 5th Joint Civil Judge, Junior Division, Latur.

"Prayer clause "C" and "D" in WP No.12267/2017 :- [C] Rule may kindly be made absolute by allowing the writ petition, thereby quashing and setting aside the impugned common order dated 17/07/2017 (Annexure - 'C' collectively) passed by the learned Incharge 5th Joint Civil Judge, Junior Division, Latur, below Exhibit -1 in Civil Misc.Application No.09/2017, whereby the Applications (Exhibits - 01 and 09) came to be rejected.

[D] Rule may kindly be made absolute by allowing the writ petition, thereby granting/allowing Applications (Exhibits - 01 and 09) in Civil Misc. Application No.09/2017 before the Learned Incharge 5th Joint Civil Judge, Junior Division, Latur."

2. I have heard the learned Advocates for the petitioners / original defendants and respondent No.1 / original plaintiff in RCS No.406/2016 and the learned AGP on behalf of respondent No.2 Rural Police Station which was directed to be arrayed by an order of this Court dated 06/10/2017.

3. Considering the cause of action before this Court and keeping in view that RCS No.406/2016 is pending adjudication before the Trial Court, I am not required to advert to the entire submissions of the litigating sides. Suffice it to say that the issue before the Trial Court, as is raised by the plaintiff, is as to whether the sale deed by

which these petitioners have purchased the suit land could be quashed and set aside.

4. It is undisputed that the Trial Court has granted injunction in favour of these petitioners and has directed the original plaintiff to restrain himself and anybody acting on his behalf from interfering with and obstructing the peaceful possession of these petitioners over the suit property till the disposal of the suit. Application Exhibit Nos.1 and 9, which have suffered the impugned order, have been filed by the petitioners before the Trial Court for seeking police protection and for leave to complete the construction of the protective compound wall around the school, which is claimed to have been undertaken.

5. The petitioners rely upon the government resolution dated 02/06/2018, by which it has been made mandatory by the Education and Sports Department of the State of Maharashtra, that every school shall have a protective compound wall around the school in order to ensure adequate protection to the school students. By that, the schools are directed to construct such compound walls.

6. Learned Advocate for the original plaintiff, while defending the impugned order dated 17/07/2017, by which application Exhibit

Nos.1 and 9 have been rejected by the Trial Court, submits that there is no requirement for construction of any compound wall as the plaintiff is not interfering in the peaceful possession of these petitioners and the school activities. It is further contended that when no construction has been undertaken, Exhibit Nos. 1 and 9 were erroneously filed and hence rightly rejected. It is then submitted that the petitioners can take permission of the Trial Court to construct a compound wall and in the event the plaintiff obstructs in the said construction, the petitioners may then be justified in seeking police aid.

7. It requires no debate that the school students need to be adequately protected while in school and a protective compound wall is obviously a necessity. The GR dated 02/06/2018 has referred to several enactments in relation to the offences being committed against minor children. The Education Department in its wisdom, has rightly mandated that the school students need to be protected and a protective compound wall would be a necessity.

8. Learned Advocate for the petitioners submits on instructions that if the petitioners suffer an adverse result in the litigation between the original plaintiff and the defendants and in the event it

is finally concluded that the petitioners are not the owners of the suit land, the petitioners would remove the compound wall at their own costs.

9. I find from the impugned order that the Trial Court has erroneously dealt with whether any construction material was purchased by the petitioners or not and whether any contractor was being engaged to construct the wall. These issues need not be pitted against the basic requirement of protecting the school students and for which a compound wall surrounding the school premises would be necessary.

10. Considering the above and in view of the statement made by the petitioners as is recorded above, both these petitions are allowed. The impugned order dated 17/07/2017 is quashed and set aside and application Exhibit Nos.1 and 9 stand allowed.

11. Considering the contention of the learned AGP that the police aid to be supplied to the petitioners for enabling the construction of the protective compound wall would be subject to the charges to be paid by the petitioners, learned Advocate for the petitioners makes a statement on instructions that the requisite fees, as would be

suggested by respondent No.2, would be deposited with the said Authority with promptitude.

(Ravindra V.Ghuge, J.)