

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

**CIVIL APPLICATION NO.12933 OF 2017
IN WP/10126/2010**

**GORAKSHANATH BHAGUJI GAWARE AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

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Advocate for the Applicants : Shri Kolse Patil Madhukar G.
AGP for Respondents 1 to 4 : Shri S.N.Morampalle.
Advocate for Respondent 5 : Shri Mobin Shaikh h/f Shri V.R.Dhorde.
Advocate for Respondent 10 : Shri R.L.Kute.
Advocate for Respondent 13 : Shri Y.D.Kale h/f Shri R.R.Karpe.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 12th January, 2018

Per Court:

1 By this application, the original Petitioners have put forth prayer clauses (b), (c) and (d) below paragraph 8, which read as under:-

- "b) *The applicants may kindly allowed to add Respondent Nos.6 to 13 as shown in title clause in above writ petition No.10126/2010 with leave to amend petition in the interest of justice.*
- c) *Applicants may kindly allowed additional prayer clause "D-1" as "the Respondent Nos.6 to 13 be removed fancying fourth with from disputed suit land Survey No.18/3 possess by the applicants with specific direction to Respondent Nos.1 to 4 by initiating enquiry against responsible Public Officer authority who has assist Respondent Nos.6 to 13 to violate an order dated 13.12.2010 passed in writ petition No.10126/2010" as per list Exhibit R-2 dated 06.09.2013 prepared by Railway Authority.*

- d) *That, mandatory interim relief against all Respondent Nos.6 to 13 may kindly granted in terms of prayer clause "D-1" and Respondent Nos.6 to 13 be restrained to disturb peaceful possession, alienation to any third person and or construction through their agent, servant, subordinate officer, relative on encroached portion of land Survey No.18/3 in peaceful possess by applicant."*

2 The learned Advocate for the Petitioners submits that the persons sought to be added are indulging in encroachment on the land Survey No.18. Writ Petition No.10126/2010 filed by the Petitioners is pending. By order dated 13.12.2010, the parties to the writ petition were directed to maintain status-quo with regard to the possession of the suit property.

3 The grievance is that the proposed Respondents are encroaching in the land Survey No.18 and violating the orders of this Court. They have prepared bogus and forged documents including false "Kabuliyatnama" and have caused the encroachment.

4 It is, therefore, prayed that this Court should grant injunction in favour of the Petitioners, remove the fencing from the suit land No.18/3, initiate enquiry against public officers and restrain the proposed Respondents from commencing the construction or disturbing the peaceful possession of the Petitioners.

5 The learned Advocates for Respondent Nos.5, 10 and 13 have

opposed this application. Reliance is placed on the affidavits in reply filed by Respondent Nos.5 and 10 to contend that Respondent No.10 along with the partners are the owners of the lands Gat Nos.36, 37, 28 and 40/1 (2). They have nothing to do with land Gat No.18. No encroachment has been caused by them.

6 I find that the issue before this Court is with regard to Mutation Entry No.1654 dated 20.03.2004 and Mutation Entry No.9797. As such, the dispute is with regard to the revenue entries concerning the property described by the Petitioners as Survey No.18/3 admeasuring 1 Acre and 21 Gunthas.

7 This Court is exercising its supervisory jurisdiction in the pending Writ Petition. The questions as to whether, there is an encroachment, what is the extent to which the encroachment has been made and whether, the encroachers have prepared bogus and forged documents including "Kabuliyatnama", are the disputed questions with regard to which there are no civil proceedings initiated. In the absence of initiating the civil proceedings for seeking injunctory orders and consequential reliefs, I do not find that the Petitioners can bring within the ambit of the pending Writ Petition, all such grievances of the above nature since the Writ Petition is only with regard to the revenue entries and not with regard to the encroachment on the lands.

8 Considering the above, as the Applicants/ Petitioners can

take recourse to the appropriate remedies permissible in law, the above aspects cannot be considered by this Court in the Writ Petition that is pending.

9 In the light of the above, this Civil Application is rejected.

kps

(RAVINDRA V. GHUGE, J.)