

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

WRIT PETITION NO. 8656 OF 2016

Vijaylaxmi Husband Shivaji Vitkar	... Petitioner
Versus	
Solapur Municipal Corporation	... Respondent

.....
Ms. Manjiri Sharad Parasnis for the Petitioner.
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CORAM : M. S. SONAK, J.

DATE : 12th OCTOBER, 2018.

P. C.:

1. Heard Ms. Manjiri Parasnis, learned Counsel for the Petitioner.
2. The challenge in this petition is to the orders dated 19th December, 2015 and 18th February, 2016 made by the learned Trial and Appeal Courts, rejecting the petitioner's application for injunction to restrain the respondent – Solapur Municipal Corporation from interfering with the petitioner's possession of the suit plot.
3. Ms. Parasnis, the learned Counsel for the petitioner submits that the petitioner is the owner of the suit plot. She submits that the declaration of the suit plot or any part thereof as an open space in the lay out plan, is itself improper. Without prejudice she

submits that even if, there is a declaration that the suit plot is an open space, the corporation has to follow the provisions of Section 126 of the M.R.T.P. Act, 1966 and since this has admittedly not been done, the corporation is required to be restrained from interference.

4. The two Courts have recorded findings that the petitioner has not been able to demonstrate that she has become the full owner of the suit plot. The two Courts therefore held that the petitioner has failed to make out any *prima-facie* case. The Appeal Court, on a demurer has held that the balance of convenience clearly lies in favour of the Corporation which intends to develop the open space to provide amenities for the area in the sanctioned lay out plan.

5. The Appeal Court has taken cognizance of the development on the suit plot which was found to be at an advanced stage. The Appeal Court has also taken cognizance of the huge investment made by the Corporation for the construction of a compound wall by using municipal funds. All this negates, at least *prima-facie*, the claim of the petitioner being in possession of the suit plot. In any case, the balance of convenience was certainly not in favour of grant of any injunctive relief against the corporation, because grant of such injunctive relief would prejudice public interest. Besides, as noted by the learned trial judge as well as the learned appellate judge, the petitioner has failed to establish *prima-facie* title. Therefore, the contention based upon the provisions of the M.R.T.P. Act also cannot be accepted at the present stage.

6. In *Wander Ltd. and another Vs. Antox India P.Ltd.- 1990 (Supp) SCC 727* the Apex Court has held that the appellate court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion.

7. Applying the aforesaid principles it cannot be said that the two courts, in the present case, have exercised their discretion unreasonably or arbitrarily so as to warrant any interference.

8. Accordingly, this petition is liable to be dismissed and is hereby dismissed. There shall however be no order as to costs.

9. However, it is clarified that the observations in the impugned orders or for that matter in the present order are only

for the purposes of deciding the issue of temporary injunction and therefore, all such observations need not influence the learned trial judge while disposing of the suit on merits. The suit will have to be decided on its own merits on the basis of the evidence which the parties may tender in the suit.

(M. S. SONAK, J.)