

NSC.

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

CIVIL WRIT PETITION (STAMP) NO.20946 OF 2018

Sandesh Devram Doke and Ors.

...Petitioners

Versus

Maruti Govind Doke and Ors.

...Respondents

Mr.D.S.Mhaispurkar a/w Mr.S.M.Mangaonkar, for the Petitioners.

Mr.Tejas Deshmukh, for the Respondent No.1

Mr.S.D.Rayarikar, A.G.P for the Respondent Nos.2 and 3.

Mr.S.R.Page, for the Respondent No.4.

CORAM : REVATI MOHITE DERE, J.

DATE : 3rd SEPTEMBER, 2018

P.C. :

1. Heard learned counsel for the parties.
2. Rule. Rule is made returnable forthwith with the consent of the parties and is taken up for final disposal. Respondents waive service through their respective Counsel.
3. By this Petition, the Petitioners have impugned the order

dated 14th June, 2018, passed by the Respondent No.2 – Hon'ble Minister, Revenue Department, Government of Maharashtra, Mantralaya, Mumbai, in R.T.S-3417/3560/Case No.58/J-5.

4. Learned Counsel for the Petitioners submitted that the impugned order is patently erroneous, inasmuch as, the Hon'ble Minister stayed the order of the Additional Commissioner, Pune Division, Pune, dated 12th June, 2017, despite the fact, that the Petitioners Revision Application was pending before the learned Additional Commissioner, Pune. He submitted that the learned Additional Commissioner, Pune, although had initially not granted stay, had subsequently, vide order dated 12th June, 2017, in view of the subsequent developments stayed the proceedings i.e. construction, which was taking place on the land in question.

5. Learned Counsel for the Respondent No.1 opposed the Petition. He submitted that no interference was warranted in the impugned order. He submitted that the learned Additional Commissioner, Pune had on 11th May, 2017 issued notices to the Respondents, returnable on 21st

August, 2017. However, prior to the said date, the learned Additional Commissioner, Pune, heard the application filed by the Petitioners and stayed the N.A. (Non-Agriculture) order.

6. Perused the papers. The Petitioner Nos.3 and 4 and the Respondent No.1 are related. The dispute in question is with respect to a land, bearing Gat No.691 and Gat No.720, situated within the limits of Gram Panchayat, Eklahare, Taluka – Ambegaon, District – Pune.

7. Learned Counsel for the Petitioners submitted that the Respondent No.1 had submitted a map, which is on page 24 of the Petition and sought N.A. of Gat No.691 on the basis of the said map. He submitted that in the said map, which is on page 24 of the Petition, Gat No.720 was shown as *padrasta*. He submitted that pursuant to the representation made by the Respondent No.1, the SDO allowed the Application and Gat No.691 was made an N.A land vide order dated 5th March, 2013. According to the learned counsel for the Petitioners, when the Petitioners learnt that Gat No.691 was made N.A, they applied before the SDO and showed the two maps (i.e. the original map which is on page 21 of the Petition and the map

at page 24 relied upon by the Respondent No.1) and pointed out the discrepancy in the said maps and plan. In the map submitted by the Petitioners, both the Gat Nos.691 and 720 are reflected, whereas, in the map submitted by the Respondent No.1, Gat No.720 is not mentioned and instead the said Gat No.720 is shown as *padrasta*. Pursuant to the Application filed by the Petitioners, the SDO granted stay to its order granting N.A. to Gat No.691. In the interregnum, the Petitioners filed an Appeal against the N.A. order, before the learned Additional Collector, Pune. The learned Additional Collector, Pune, vide order dated 9th February, 2016, rejected the said Appeal, considering the observations made by the learned Civil Judge Junior Division, Ghodegaon, in an order passed below Exhibit – 5 (temporary injunction application). Being aggrieved by the said order dated 9th February, 2016, passed by the Additional Collector, Pune, the Petitioners preferred a Revision before the learned Additional Commissioner, Pune and also filed an Application seeking stay of the N.A. order. The learned Additional Commissioner, Pune, was pleased to issue notice, returnable on 21st August, 2017. It appears that in the meantime, prior to the returnable date, the Petitioners filed an application and brought to the notice of the learned Additional

Commissioner, Pune, about a petrol pump being constructed on Gat No.691. The learned Additional Commissioner, Pune, vide order dated 12th June, 2017, after noting the discrepancy in the maps granted stay to the proceedings, till the disposal of the Revision Application.

8. Being aggrieved by the said order, granting stay to the N.A. Order, the Respondent No.1 challenged the same by filing a Revision before the Hon'ble Minister. The Hon'ble Minister was pleased to stay the order of the learned Additional Divisional Commissioner, Pune. The Petitioners being aggrieved by the order granting stay, challenged the same before this Court by Writ Petition. This Court directed the Hon'ble Minister to dispose of the Revision Application filed by the Respondent No.1, within three months. This Court was also pleased to stay the order of the Hon'ble Minister, till the Revision Application, pending before him was finally disposed of for a period of two weeks, thereafter. The Hon'ble Minister vide order dated 14th June, 2018, allowed the Revision filed by the Respondent No.1 and as such set aside the order dated 12th June, 2017, granting stay to the N.A. order, by the learned Additional Commissioner, Pune Division, Pune. The Petitioners are aggrieved by the said order in this

Petition.

9. There is a dispute, between the learned counsel for the Petitioners and the learned counsel for the Respondent No.1, whether there is construction activity going on in Gat No.691. According to the learned counsel for the Respondent No.1, petrol pump has already been constructed on the said Gat No.691, whereas, according to the learned counsel for the Petitioners, the construction is still in progress.

10. Be that as it may, without going into details, *prima facie*, considering the fact that the Petitioners Revision is pending before the learned Additional Divisional Commissioner, Pune, it would be appropriate to quash and set aside the order passed by the Hon'ble Minister and restore the stay granted by the learned Additional Commissioner, Pune, vide order dated 12th June, 2017.

11. Accordingly, the stay granted by the learned Additional Commissioner, Pune, vide order dated 12th June, 2017, shall continue, till the Revision filed by the Petitioners is finally decided. All contentions of

both the parties are kept open. The hearing before the learned Additional Commissioner, Pune, is expedited.

12. Rule is made absolute in above terms.

13. All concerned to act on the authenticated copy of this order.

(REVATI MOHITE DERE, J.)