

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****WRIT PETITION NO. 9396 OF 2017****Koproli Gramastha Mandal & Ors.****..... Petitioners****VERSUS****Ankush Ramchandra Warde & Anr.****..... Respondents****ALONGWITH****CIVIL APPLICATION NO. 375 OF 2018****IN****WRIT PETITION NO. 9396 OF 2017****Ankush Ramchandra Warde & Anr.****..... Applicants****VERSUS****Koproli Gramastha Mandal & Ors.****..... Respondents**

Ms.Gauri Godse, i/b. Mr.Rohit Joshi for the Petitioners.

Mr.Atul Damle, Senior Advocate, i/b. Mr.Nishigandh Patil for the Respondent nos. 1 and 2.

CORAM : R.D. DHANUKA, J.**DATE : 29th AUGUST, 2018****P.C.**

By this petition filed under Article 227 of the Constitution of India, the petitioners have impugned the order passed by the learned District Judge IV, Raigad at Alibag allowing Civil Miscellaneous Appeal No.81 of 2016 filed by the respondents thereby impugning the order passed by the learned Joint Civil Judge, Junior Division allowing the application below Ex.5 filed by the petitioners (original plaintiffs).

2. The learned trial judge has granted injunction against the respondents from disturbing the possession of the petitioners. This

injunction granted by the learned trial judge has been reversed by the learned District Judge.

3. It is not the case of the respondents that they have any right, title or interest of any nature whatsoever in the property of the petitioners.

4. It is the case of the petitioners that the respondents had applied for permission to use the suit property to have access to their properties. It is not in dispute that the respondents have not filed any proceedings *inter alia* praying for any access from the plots of the petitioners nor for creation of any road till date.

5. A perusal of the order passed by the District Court indicates that the District Court has reversed the *prima facie* view taken by the trial court without appreciating the fact that the petitioners had not sought any relief in respect of any particular road. Though there was no proceedings filed by the respondents for having an access from the plot of the petitioners or otherwise, the learned appellate court has set aside the interim relief granted by the learned trial judge. In my view, the impugned order passed by the learned District Court is contrary to the principles of law laid down by the Supreme Court in case of ***Wander Ltd. And another vs. Antox India P.Ltd., 1990 SCC 727*** and thus the said order deserves to be set aside. I, therefore, pass the following order :-

- (a) The impugned order dated 17th July, 2017 passed by the learned District Judge IV, Raigad at Alibag in

Civil Miscellaneous Appeal No.81 of 2016 is quashed and set aside.

(b) The order passed by the learned trial judge on 1st June, 2016 below Ex.5 is restored to file.

(6) Writ petition is made absolute in the aforesaid terms. No order as to costs.

(7) It is made clear that if any proceedings are filed by the respondents for claiming any access from the plot of the petitioners or for creation of road, the same shall be decided on its own merits.

(8) In view of the disposal of the writ petition, civil application does not survive and is accordingly disposed of.

[R.D. DHANUKA, J.]