

vks

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

**WRIT PETITION NO.12822 OF 2017**

Hemant Naqmdao Lande ... Petitioner

V/s.

Pimpri Chinchwad Municipal Corporation and ors ... Respondents

Mr. P. S. Dani, Senior Advocate i/by Ravi P. Kadam, for the Petitioner.

Mr.N.V. Walawalkar, Senior Advocate with Mr. G.H.Keluskar, for the Respondents.

**CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.**

**DATE : 1<sup>st</sup> FEBRUARY, 2018.**

**P.C. :**

- 1] Heard learned Senior Counsels for both the parties.
- 2] By this petition filed under 227 of the Constitution of India, the petitioner is challenging the concurrent finding of the fact recorded by the trial Court and the Appellate Court, while deciding the petitioner's application for interim relief filed at Exh.5., in Special Civil Suit No.148 of 2016.

- 3] As writ petition is against the concurrent finding of the

trial Court and the Appellate Court, the scope of interference by this Court in writ jurisdiction is limited which is only to ascertain whether there is any perversity in the impugned orders passed by both the Courts below.

4] This Court, hence, with the assistance of learned Senior Counsels appearing on behalf of both parties, has gone through the entire pleadings of the parties and the material placed on record on the basis thereof, it can be seen that the petitioner is claiming to be the owner and in possession of survey Nos. 2054/1 and 2055, both admeasuring 708 sq. meters situated at Kasarwadi, Mumbai Pune Road, Pune. The petitioner has, in the plaint itself, admitted that out of said survey numbers, an area admesuring 186.60 sq. meters has already been acquired for the purpose of widening of Mumbai Pune Road and he is in possession of only remaining area admeasuring 521.40 sq meters. According to petitioner, while carrying out construction of the Fly Over on Mumbai Pune Road, respondent is making construction of the ramp of the Fly over on this land, which is in his possession.

5] In the written statement and say filed to this application at Exh.5, respondent has made categorical statement that it is

carrying out construction only on the acquired land admeasuring 186.60 sq. meters and was not at all concerned with the remaining portion of 521.40 sq. meters which is in possession of petitioner.

6] In view thereof, it was most incumbent on the part of petitioner to show that the construction of the ramp is carried out on the land in his possession, by way of making encroachment. The law is well settled that in respect of dispute relating to encroachment, it is necessary that existence and location of the disputed land has to be ascertained by appointment of T.I.L.R. or City Surveyor. The petitioner has not done that.

7] In such situation, in the absence of any evidence showing that the respondent is carrying out construction of the ramp on the land in possession of petitioner, if the relief of interim injunction is granted, then as rightly held by the trial Court and the Appellate Court, it is the general public at large which is going to suffer on account of delay in construction of the fly over and the ramp. Therefore, absolutely no prima facie case is made out by the petitioner, nor the balance of convenience lies in his favour and irreparable loss would be caused to respondent and also to public at large. Both the Courts below have thus, rightly rejected petitioner's

application for interim injunction.

8]           Hence, no interference is warranted in the impugned order, in writ jurisdiction of this Court.

9]           Accordingly, Writ Petition stands dismissed.

10]          In view of dismissal of the Writ Petition, interim stay granted earlier, stands vacated.

**[DR.SHALINI PHANSALKAR-JOSHI, J.]**