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

WRIT PETITION NO.12975 OF 2017.

Vishnu Bhiva Kambale and anr	...	Petitioners
V/s.		
UTECH Engineering Works (I)		
Pvt. Ltd and anr	...	Respondents

Mr. Mohit Jadhav, for the Petitioners.
Mr. Shyam Dewani a/w Ms. Nivedita
Kundagi, Mr. Chirag Chanani and Mr. Pratik
M. Thakkar, for the Respondents.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 15th JANUARY, 2018.

P.C. :

- 1] Heard learned counsel for the petitioner and respondents.
- 2] Rule.
- 3] Rule made returnable forthwith with consent of parties and the petition is taken up for final hearing.
- 4] By this petition filed under Article 227 of the Constitution of India, the petitioners are challenging the order dated 24.10.2017, passed by the District Judge-11, Pune, in Misc. Civil Appeal No. 291 of 2017, preferred by the petitioners against the order dated 27.7.2017, passed below Exh.5 in R.C.S. No.67 of 2017. The said application at

Exh.5 was preferred by the respondents herein for interim mandatory injunction directing the petitioners herein to clear the blockage of access road of the respondents, by removing the stones, sand etc., from the suit property and also for temporary injunction restraining the petitioners from disturbing their possession over the suit property till decision of the suit.

5] The case of the respondents is that they are the owners and in possession of the plot of the land admeasuring about 71 Ares bearing Gat No.113 of village Khurd, Tal. Bhore, alongwith factory shade standing thereon. As they were in need of the access road to National Highway No.4, respondent No.2 has purchased the area of land admeasuring 600 sq. meters, out of Gat No.142, as described in paragraph No.1B of the plaint from erstwhile owners Shri. Ramchandra Sadashiv Dimble vide sale deed dated 5.12.2006, mutation entry is also recorded to that effect. Respondents are using the said property as access road for their employees, workers, vehicles in their company without any objection or obstruction from anybody. However, on 15.6.2017, the petitioners have blocked the said access road of the respondents by putting stones, sand etc., and hence respondents filed the suit and application for mandatory injunction.

6] The petitioners herein admitted that the respondents

own and possess 6 Ares land out of Gat No.142. However, they contended that respondents have alternate way from the east-side for their access and as there is alternate way, respondents are not entitled to relief of interim mandatory injunction or temporary injunction.

7] The trial Court after hearing learned counsels for both the parties and after perusal of the documentary evidence on record, was pleased to allow the application at Exh.5 on 27.7.2017. As within 7 days from the date of the order, the petitioners herein did not clear blockage of the access road, respondents filed an application for breach of temporary injunction under Order 39 Rule 2A of CPC and asked for police help.

8] Thereafter on 16.8.2017, the petitioners herein filed the counter claim contending that out of land bearing Gat No.142 admeasuring 1 H. 80 Ares land, area of about 9.07 Ares is owned and possessed by them. It is contended that some portion of gat No.142 is already acquired for the National Highway. Thereafter some portion admeasuring 75 Ares is acquired by the Land Acquisition officer, Satara for Service Road. In addition thereto, an area admeasuring 2.3 Ares is acquired by National Highway. Thus the area of only 2 Ares is remaining and it is prayed that the said area be declared as ancestral landed property of the petitioners and respondents be

restrained from causing obstruction to the possession of the petitioners therein.

9] On the basis of these facts, Misc. Civil Appeal was also filed by the petitioners on 12th August, 2017, challenging the impugned order passed by the trial Court below Exh.5.

10] The Appellate Court, however, after hearing learned counsels for the parties, was pleased to dismiss the said appeal, having regard to the sale deed which is already executed in favour of Respondent No.2 in respect of the area of the access road.

11] This order of the Appellate Court is challenged in this petition. The submission of learned counsel for petitioners is that there appears some serious dispute about the exact location of the access road. Therefore, measurement of both the lands is essential and application to that effect is also filed by the petitioners before the trial Court under Order 26 Rule 9 CPC and till the said application is decided, no such relief of interim mandatory injunction should have been allowed.

12] At the outset itself, it has to be stated that as this writ petition takes an exception to the concurrent finding of fact arrived at by the trial Court and confirmed by the Appellate Court, as per the settled position of law, this Court has to be very slow in interfering with the said finding. The orders, passed by both the trial Court and

Appellate Court clearly, go to show that both the Courts have considered the documentary evidence produced on record by the parties and have recorded a reasoned finding. It is not disputed by the petitioners also that the respondent No.2 has purchased 6 Ares land out of gat No.142 for using as an access to their factory situated in Gat No.113, from Ramchandra Sadashiv Dimbale by registered sale deed dated 5.12.2006. On the basis of said sale deed, mutation entry is also effected in the name of respondent No.2.

13] The trial Court and the Appellate Court, have considered the previous sale deed dated 18.4.1991 which was executed by Bhiva Jabaji Kamble the father of the petitioners and others in favour of Azar Hussain Nijamuddin Shaikh and Smt. Nargis Banu, in respect of gat No.142. The sale deed is also signed by the petitioner No.2 as confirming party. In the said sale deed, it is clearly mentioned that NH-4 is passing through the land bearing Gat No.142 and therefore, the said land is divided in two parts. One on the eastern side of N.H.4 and another on Western side of NH-4. As per oral settlement, petitioner's father Babu Kamble got the portion of land Gat No.142 which is situated on the western side of NH-4; whereas the subject matter of this suit is the portion of the land situate on eastern side of NH-4 and hence petitioners have no concern thereto. Pertinently both the petitioners were also parties to the said sale deed dated

18.4.1991. They have signed the sale deed as confirming parties. Moreover, in the written statement, they have admitted the oral partition of land gat No.142. Hence, it goes without saying that they cannot raise any obstruction to the access road of the respondents in which property they have no concern and which is purchased, owned and used by the respondents.

14] The trial Court and the Appellate Court have therefore, rightly held that the respondents have made out prima facie case, the balance of convenience is also in their favour, as admittedly petitioners have blocked the said access road. Hence, the interim mandatory injunction order passed by the trial Court in their favour and confirmed by the Appellate Court does not call for any interference as such. The petition, therefore, being without any merits stands dismissed.

15] However, it is made clear that whatever observations are made hereinabove are only for the purpose of deciding this petition and learned trial Court shall not be influenced by the same while deciding the suit on merits.

16] At this stage, learned counsel for the petitioners submits that the appellate Court has granted stay to the impugned order passed by the trial Court and this Court has also extended the stay granted by the Appellate Court from time to time. Therefore, the

operation of this order be stayed for a period of 6 weeks.

17] In view thereof, the order of staying the execution of interim mandatory injunction is extended for a period of four weeks from today, in order to enable the petitioners to approach the Hon'ble Supreme Court.

18] The parties to act on the authenticated copy of this order.

[DR.SHALINI PHANSALKAR-JOSHI, J.]