

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

APPEAL FROM ORDER NO.15 OF 2018

(Chakradhar Swami Gramin Vikas Mandal Newasa and others Vs.
The Director General and others)

WITH

APPEAL FROM ORDER NO.16 OF 2018

Mr.A.P.Bhandari, Advocate for the appellants.

Mr.S.B.Deshpande, ASGI with Ms.Sudha Kulthe, Standing Counsel
for Union of India, For respondent Nos. 1 and 2.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 04/01/2019

PER COURT :

1. The learned Advocate for the petitioners, the learned ASGI and the learned Standing Counsel for the Union of India have been heard extensively. The affidavit in reply filed by the Director General of Archaeological Survey of India has also been got into threadbare.

2. The learned Advocates for the respective sides are in agreement in so far as the following issues are concerned :-

[a] Though the Appellate Court has answered issue Nos. 1 and 2, reproduced hereinbelow, the direction in Clause 3 below paragraph No.23 virtually opens up the entire trial in RCS No.181/2004 :-

Points

Findings

1. Whether the defendants proved that the plaintiffs committed the encroachment on the area declared in favour of defendant No.1 as Archaeological site and the place of national importance ? Not proved
2. Whether the defendants proved that, the structure erected by the plaintiffs on the alluvial land and outside the area of 16 acre 20 Are was within the limits of the protected and the prohibited limits ? No

[b] If the issue of encroachment is to be considered afresh by the Trial Court in view of the directions of the Appellate Court which has also ordered re-measurement of the entire properties involved in the suit, the issue as to whether the plaintiffs have been using a way that travels from the prohibited and protected area and reaches the area where the temple of Chakradhar Swami is situated, would also have to be thrown open for reconsideration.

3. In view of the above, the litigating sides submit that as the Trial Court is directed to re-decide the issue of encroachment by permitting a measurement of the suit properties, the issue as to whether the path used by the plaintiffs would fall within the realm of easementary rights, will also have to be considered afresh.

4. I find that if the issue of encroachment to the extent of a protected, prohibited and regulated area set out in the notification Exh.92 is to be considered afresh, the grievance of the plaintiffs pertaining to the right of way would be dependent upon the conclusion on the issue of encroachment. If it is presumed that the plaintiffs have not resorted to an encroachment in so far as their temple is concerned, they may then assert their right of way.

5. It is an undisputed position that an area of 100 meters in all directions from the borders of the protected monument would constitute the prohibited area and the area falling within 101 to 300 meters from the borders of the prohibited area, would be the regulated area. The citizens have some statutory rights in so far as the regulated area is concerned and the competent authority can consider such rights of the citizens strictly within the premises of such statutory rights flowing through the enactment.

6. In view of the above and upon considering the statements made by the respective sides, the following directions are being issued, by disposing of these appeal from orders, in addition to the direction in Clause 3 below paragraph No.23 of the impugned judgment of the Appellate Court :-

[a] The litigating sides are permitted to lead additional evidence after a Court Commissioner is appointed by the Trial Court and upon placing his report of measurements and sketch map on record.

[b] The issue of encroachment would be considered in the light of the area restrictions concerning the protected, prohibited and regulated areas as noted above.

[c] Only if the Trial Court concludes that the temple visited by the plaintiffs is outside the protected area, it shall further consider the issues raised by the litigating sides in accordance with the provisions of the Ancient Monuments and Archaeological Sites and Remains Act, 1958 inclusive of the the amendments introduced u/s 20-A to C.

[d] The issue of right of way which is dependent upon the conclusion on the above stated issues, will then be considered by the Trial Court on its own merits and in the light of the provisions of the act inclusive of Section 19.

7. Pending civil application does not survive and hence stands disposed of.

(Ravindra V.Ghuge, J.)