

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

950 WRIT PETITION NO.5253 OF 2019

**GULABSINH NARHARIRAV SOLUNKI
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS
WITH
951 WRIT PETITION NO.5254 OF 2019**

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VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

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Advocate for Petitioner : Mr. Kasliwal Anil H.
AGP for Respondent No. 1 & 5 : Mr. K.S. Patil.
Advocate for Respondents No. 2 to 4 : Mr. Gunale V. D.

CORAM : V. L. ACHLIYA, J.

DATE : 02/05/2019

PER COURT :

1. Issue notice to the respondents.
2. Mr. Gunale, learned counsel waives service for respondents No. 2 to 4/Caveators. Learned A.G.P. waives notice for respondents No. 1 and 5.
3. By consent both the petitions are heard finally at the stage of admission.
4. By the impugned orders under challenge the learned District Judge-1, Ahmedpur, District Latur, passed in Civil Appeals No. 3/2019 and 04/2019 allowed the applications filed under Order 41 Rule 5(1)

of the Code of Civil Procedure to stay the judgment and decree passed in Regular Civil Suits No. 36/2013 and 37/2013 vide order dated 07.03.2019 separately passed in appeals.

5. The learned counsel for the petitioner assailed the impugned orders with contention that the orders have been passed without application of mind and effect of stay granted to the judgment and decree passed in favour of the petitioners.

6. It is submitted that the petitioner has filed Regular Civil Suit No. 36/2013 as against the defendants/respondents for declaration and injunction claiming that the suit property is allotted to Rajput Devalaya (Trust) and the plaintiff is President and trustee of the said Trust. The land was allotted after legal formalities and same has been recorded as trust property. So also to the record of the Grampanchayat also shows that the suit property is recorded as trust property. In the year 2003 the petitioner made application for construction over the suit property and same was granted. In the year 2013 the defendants started disturbing the peaceful possession and enjoyment over the suit property and claimed that the plaintiff is an encroacher. In view of the dispute raised and threat of demolition, the plaintiff filed suit for declaration and injunction. By the judgment and decree dated 20.03.2018 the suit came to be decreed and the relief of declaration

and injunction was granted in favour of petitioner. The defendants have been restrained to interfere with the possession over the house property No. 44 admeasuring 1080 square meters. Being aggrieved, the defendants preferred appeal which came to be registered as Regular Civil Appeal No. 03/2019.

7. Similarly, the plaintiff filed another suit as against the defendants as Regular Civil Suit No. 37/2013 seeking declaration and injunction in respect of the house property bearing No. 15 admeasuring 1665 square meters, situated at Tembhurni Tq. Ahmednagar, District Latur. On merit the said suit came to be decreed by judgment and decree dated 20.03.2019 passed by the Civil Judge, Senior Division, Ahmedpur, District Latur and defendants are restrained to interfere with the possession of the plaintiff. Being aggrieved, the defendants i.e. respondents No. 2 to 4 preferred appeal.

8. By the impugned orders, though separately passed, the learned District Judge-1, Ahmedpur stayed the decree passed in Regular Civil Suit No. 36/2013 as well as Regular Civil Suit No. 37/2013. It is submitted that while passing the impugned orders to stay the judgment and decree passed in said suits the only consideration appears to applied as to hardship to be suffered by the appellants. The learned Judge has failed to take into account that the

suits have been decreed on merit. So also the implication and serious consequences to follow on account of stay granted has not been taken into consideration. It is submitted that there is likelihood that the respondents may likely to demolish the structure and dispossess the petitioner.

9. On the other hand the learned counsel for respondents No. 2 to 4 supported the order passed by the Appellate Court. It is submitted that if the order is not stayed it would result serious consequences as the water storage tank constructed on the disputed site with capacity of 75000 liters, providing water to the villagers may be discontinued at the hands of petitioner. So also the petitioner may obstruct respondent Nos. 2 to 4 from taking the water from the well from which the water is stored in the water storage tank constructed for supply of water to the villagers. It is further submitted that the water storage tank is located on the government property and the petitioner has claimed the same as private property.

10. Since the suits were decreed and the petitioner was likely to obstruct to take water from the well and store the same in the water tank for the purpose of distribution to the villagers, the decree passed by lower court appears to be stayed.

11. On due consideration of submissions advanced in the light of overall facts of the case, the judgment and decree passed by the Trial Court and the impugned orders passed by the learned District Judge-1, I am of the view that the orders have been passed without proper application of mind. Due to the dispute raised as to the ownership of land together with structure, the petitioner/plaintiff was required to file suit in view of threat of demolition of structure and dispossession of the petitioner/plaintiff passed by respondents No. 2 to 4. Both the suits have been decreed in favour of the petitioner/plaintiff. Thus the decision on merit has been recorded in favour of the plaintiff in suits. In such circumstances, the Appellate Court ought not to have passed the order to stay the decree passed in favour of the petitioner in such casual manner.

12. Perusal of the impugned orders reveals that no reasons have been recorded for granting stay except observing that the purpose of appeal would be frustrated if stay is not granted. The submission advanced that the stay was granted due to likelihood of discontinuation of water supply to the villagers from the water storage tank constructed on the disputed site, nowhere reflected from the orders passed by the learned District Judge. If the appellants were apprehending that the petitioner i.e. original plaintiff will not allow to

draw the water from the well and prevent the village panchayat from supplying water from storage tank to the villagers, the Trial Court could have properly moulded the reliefs, so as to protect the interest of plaintiff as well as defendants in suits. In view of the stay granted to the judgment and decree, the situation is created whereby the appellants may demolish the house property situated over the suit property and also dispossess the plaintiff, though the plaintiff has succeeded before the Trial Court. In the facts and circumstances of the case, I am of the view that the order passed by the Appellate Court deserves to be modified so as to protect the interest of both the sides by directing the parties to maintain status-quo in respect of the suit property as exist on and before the date of passing of the judgment and decree. The order to preserve the status-quo would dispel the apprehension of petitioner as well as the respondents. During the operation of status-quo neither the suit structure can be demolished nor the respondent No. 1/petitioner can prevent or obstruct the respondents No. 2 to 4 from distributing the water to the villagers from the water storage tank and well situated on the disputed site. Hence, following order is passed.

ORDER.

The impugned orders dated 07.03.2019 passed by the District

Judge-1, Ahmedpur, District Latur, in Regular Civil Appeals No. 03/2019 and 04/2019 granting stay to decree passed by Trial Court are set aside and clause (2) of the orders substituted as under :

(a) Pending disposal of the appeals both the parties to preserve status-quo in respect of the suit property as prevailing on and before passing of the judgment and decree by the Trial Court in Regular Civil Suits No. 36/2013 and 37/2013.

2. Both the petitions are disposed of in above terms.

(V. L. ACHLIYA, J.)

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