

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

WRIT PETITION NO.8363 OF 2018

SUDAM BALAJI KOPNAR AND OTHERS
VERSUS
DAMODAR BARKU KOPNAR AND OTHERS

...

Advocate for the Petitioners : Shri Latange V.P.
Advocate for the Respondents : Shri K.N.Shermale.

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 08th April, 2019

Per Court:

1 I had passed the following order on 08.03.2019 in order to grant ad-interim protection to the Petitioners :-

- "1. In order to test the bona-fides of the petitioner, I called upon the learned Advocate to make a statement as to whether the petitioners would deposit an amount of Rs. 25,000/- in this Court. The learned Advocate sought a pass over and when this matter was called out at the end of the board, it is submitted that these petitioners who are farmers, are agreeable to deposit an amount of Rs. 25,000/- jointly in this Court.
2. Considering the above, on the condition that these five petitioners shall jointly deposit an amount of Rs. 25,000/- (Rupees Twenty Five Thousand only) in this Court on or before 29/03/2019, the impugned order dated 21/02/2018 shall not be acted upon.
3. Stand over to 08/04/2019 in the "urgent admissions category." Until then, these petitioners would be at liberty to act strictly in accordance with the order dated 18/12/2014 passed by the Trial

Court below Exhibit 5 in RCS No. 181/2014."

2 I have heard the learned Advocates for the respective sides and with their assistance, I have gone through the petition paper book.

3 It is evident that these litigating sides are inter-se brothers and close relatives. It is also undisputed that the issue raised in RCS No.181/2014 is with regard to the fixing of boundaries, settling the Bandh and granting injunction against the Defendant.

4 I find that the nucleus of the dispute is the boundaries and existence of the Bandh connected to the boundaries. The record reveals that as the boundaries are not properly fixed and as there is a dispute with regard to the Bandh, whenever the litigating sides commence the cultivation activities, allegations are levelled that the other sides are encroaching on the land of the former.

5 I find the facts and circumstances of the case in hand to be quite peculiar. Though the court commissioner is not to be appointed casually or prior to the conclusion of the recording of oral evidence, I find that in this peculiar case, the court commissioner will have to be appointed keeping in view that the agricultural activities in the respective lands of these litigating sides would commence in the month of May as the rainy season would begin in the month of June. The suit will not be decided within a period of three weeks and I am constrained not to grant

such time frame as the suit is not too old.

6 The learned Advocate Shri Shermale submits that the Taluka Inspector of Land Records (TILR) is appointed as the court commissioner so as to measure the agricultural lands of all the litigating sides, fix the boundaries and settle the Bandh in order to ensure that the agricultural activities of these parties can safely commence thereafter.

7 In view of the above, this Writ Petition is disposed off with the following directions :-

- (a) The Trial Court shall invest the amount of Rs.25,000/- deposited by these Petitioners, in a Fixed Deposit Receipt in any nationalized bank for an initial period of one year and renewable for the like period thereafter, subject to the decision in the suit.
- (b) The impugned order dated 21.02.2018 shall stand stayed and CMA No.6/2014 shall be adjourned.
- (c) The T.I.L.R., who is already appointed, should complete the exercise and submit his report on or before 02.05.2019 before the Trial Court.
- (d) In the event of any dispute between the parties on the report of the TILR, the same shall be subject to the result of the suit.
- (e) The parties would continue to be bound by the observations in the report of the TILR till the decision in the suit, in order

to avoid further conflict between the parties, meaning thereby, that both the litigating sides shall not disturb each other and shall abide by the report of the TILR until the suit is decided.

- (f) While delivering a decision in the suit, if the Trial Court is convinced that the Petitioners have not caused any further friction or any act of disobedience of the injunctory order, the amount of Rs.25,000/- with accrued interest may be returned to them. If any adverse view is taken, the Trial Court would consider granting the said amount to the Respondents.
- (g) The Trial Court would decide RCS No.181/2014 as expeditiously as possible and in any case, on or before 29.02.2020.