

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7659 OF 2017

RAGHUNATH VENKATRAO PHADNIS AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioners : Shri Kochar M.G.h/f Shri Warma B.R.
AGP for Respondents 1 to 4 : Shri Yadav-Lonikar S.R.
Advocate for Respondent 5 : Shri Adgaonkar R.P.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: July 08, 2019

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PER COURT :-

1. On 9.7.2017, this Court has passed the following order:-

“1. Matter had been mentioned submitting grave urgency, since possession of the petitioners is sought to be taken over under the impugned action pursuant to order dated 2nd June, 2017. As such, the matter was circulated and is appearing on board.

2. Leave to amend and annex copy of order dated 2nd June, 2017.

3. Learned advocate for the petitioners contends that proceeding between and the petitioners and the wakf respondent is pending in Supreme Court, wherein special leave petition on behalf of the petitioners has been granted and interim relief in the form of stay to the impugned order during pendency of appeal before the Supreme Court has been granted and a photo

copy of the same has been annexed at Annexure "E" to the present writ petition.

4. *Mr. Warma, learned advocate contends that although reference has been made to the Supreme Court order, yet Tahsildar appears to overlook further order of stay to the operation of impugned order. In the circumstances, according to learned advocate, the purported action pursuant to communication / order dated 2 nd June, 2017 is not only unsustainable but is high handed, arbitrary and in breach of the orders of the Supreme Court. He submits that auction pursuant to order / communication dated 2 nd June, 2017 is scheduled today and the same deserves to be stayed forthwith.*

5. *Issue notice to respondents, returnable on 10 th July, 2017. Learned AGP waives service for respondents No.1 to 4 and seeks time to take instructions.*

6. *In the circumstances, till the returnable date, further action, if any, pursuant to order / communication dated 2 nd June, 2017 shall remain in abeyance.*

7. *In addition to court process, petitioners to serve respondent No.5 privately by any legally admissible mode and to file an affidavit with tangible proof of service. In case of failure to serve the respondent privately and file service affidavit at least two days before the returnable date stating that the respondents are served or not, the ad interim relief would cease to operate without further reference to the court."*

2. On 7.6.2017, this Court has heard the parties in the Civil Application No.6321 of 2019 and had passed the following order:-

“1. I have heard the learned Advocates for the respective sides. This Court has passed an order on 09/06/2017 directing that the impugned order/communication dated 02/06/2017 shall remain in abeyance. Pursuant thereto, the land, which was sought to be auctioned for eksal lavani (एकसाल लावणी), is not auctioned since the auction notice stand stayed. This order has been passed in view of the fact that the proceedings between the parties are pending before the Hon'ble Apex Court and it is stated that the Apex Court has reserved the matter for judgment.

2. Considering the above, this civil application is disposed off in view of the order of this Court dated 09/07/2017.”

3. The learned Advocate for respondent No.5 places on record a copy of the order dated 3.7.2019, passed by the Honourable Apex Court (Three Judges' Bench), vide which, Civil Appeal No.4478 of 2007, filed by Sopanrao and another Vs. Respondent No. 5 herein and others, has been dismissed.

4. Learned Advocate for respondent No.5 and the learned AGP, therefore, submit that this petition would not survive, in view of the order of the Honourable Apex Court.

5. Learned Advocate for the petitioners submits that he would not be in a position to argue against the order of the Honourable Apex Court dated 3.7.2019 and an appropriate order be passed.

6. Considering the above, this petition being devoid of merits, stands disposed off.

(RAVINDRA V. GHUGE, J.)

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