

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

WRIT PETITION NO.10899 OF 2019

PRAKASH PANDURANG PALODKAR
VERSUS
SUBHADRABAI BALAJI KADAM AND OTHERS

...

Advocate for the Petitioner : Shri Ghatge Mahesh V.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 03rd September, 2019

Per Court:

1 The petitioner, original plaintiff in RCS No.50/2012, is aggrieved by the refusal of temporary injunction by the Trial Court as well as by the Appellate Court. Specifically, he is aggrieved by the judgment and order dated 26.06.2019 passed by the Appellate Court while dismissing Miscellaneous Civil Application No.50/2012.

2 The issue is that the bridge on Purna-Zero Phata road on Bamola Nala was said to have got washed away on account of heavy rain fall on 19.06.1992. The Public Works Department has informed the petitioner by communication dated 23.10.2018 that a new bridge was constructed on the same place by installing three piers (pillars) and one abutment concrete as well as RCC slab at the same place at which the

bridge was earlier situated. It is categorically mentioned that new bridge has been constructed at the same place where the old bridge was existing.

3 In paragraph 11 of the impugned judgment, the appellate court has referred to the said communication and yet has concluded that the Public Works Department has neither mentioned that the bridge is constructed at new place nor is it mentioned that it was constructed at the same earlier place before the bridge was got washed away. This is against the record.

4 Prima facie, it appears that the learned District Court has committed an error. I could have caused an interference in the matter, but for the fact that RCS No.50/2012 coupled with RCS No.142/2011 are posted for arguments on 16.09.2019. The recording of oral evidence has been concluded in both the suits. In this backdrop, a direction to the Trial Court to consider the above stated issue with utmost seriousness on the basis of oral and documentary evidence, would serve the ends of justice.

5 In view of the above, this Writ Petition is disposed off.

6 All the parties shall advance their final oral submissions on 16.09.2019 in both the suits. The Trial Court would endeavour to deliver it's judgment in both suits on or before 22.10.2019.

7 Needless to state, as observed above, the Trial Court would consider the issue of the position of the newly constructed bridge on Bamola Nala with utmost seriousness and in the light of the oral and

documentary evidence, without being influenced by any of the observations set out in the impugned judgment of the appellate court dated 26.06.2019.

kps

(RAVINDRA V. GHUGE, J.)