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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

LETTERS PATENT APPEAL NO. 228 OF 2009
IN
WRIT PETITION NO.4885 OF 2008

WITH
CROSS OBJECTION STAMP NO. 33859 OF 2010

1. Shitalchand s/o Sudhakar Dahale APPELLANTS
Age – 39 years, Occ – Agriculture & Business
R/o Vedant Nagar,
Aurangabad
2. Shrikant s/o Sudhakar Dahale
Age – 41 years, Occ – Agriculture & Business
R/o 7, Rachanakar Colony,
Station Road, Aurangabad

VERSUS

1. Vijaykumar s/o Kanhayalal Varma RESPONDENTS
Age – 35 years, Occ – Business
R/o Jawahar Chowk,
Kannad, District – Aurangabad
2. Sanjaykumar s/o Kanhayalal Varma
Age – 30 years, Occ – Business,
R/o Jawahar Chowk,
Kannad, District – Aurangabad
3. Amol s/o Ashokkumar Varma
Age – 28 years, Occ – Business
R/o Silvatpura, No. 92, Indore
District – Indore (Madhya Pradesh)
Through General Power of Attorney
Ajaykumar Alias Gopal s/o Kanhayalal Varma
Age -33 years, Occ – Business
R/o Jawahar Chowk,
Kannad, District – Aurangabad
4. The State of Maharashtra

Through Ministry of Urban Development,

5. The Municipal Council Kannad
Through its Chief Officer
District – Aurangabad
6. The Additional Commissioner,
Aurangabad Division,
Aurangabad

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Mr. D. P. Palodkar, Advocate for the appellants
Mr. P. N. Kutti, AGP for respondents No. 4 and 6 - State
Mr. A. P. Bhandari, Advocate for respondents No. 1 to 3
Mr. S. S. Shete, Advocate for respondent No. 5

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**[CORAM : SUNIL P. DESHMUKH AND
S. M. GAVHANE, JJ.]**

DATE : 25th JULY, 2019

ORAL JUDGMENT (PER SUNIL P. DESHMUKH, J.) :

1. Heard learned advocates for the parties.
2. Genesis of present letters patent appeal appears to lie in communication dated 3rd March, 2008 issued to respondents No. 1 to 3, whereunder respondent No. 5 had declared that construction permission dated 22nd February, 2008 bearing outward No. 2008/MCK/852 had been cancelled and the respondents were directed to remove wire fencing, else the municipal council was to remove the same and recover expenses therefor. Aggrieved by the same, respondents No. 1 to 3 had been before learned single judge in writ petition No. 4885 of

2008 praying for quashing and setting aside communication dated 3rd March, 2008 and restraining the respondents from interfering with their peaceful possession and from demolishing the compound wall over property bearing survey No. 33/3 situated at Kannad, District – Aurangabad.

3. After hearing learned advocates, it appears that the dispute is about a piece of land. While the appellants claim the same to be land bearing survey No. 33/1, respondents No. 1 to 3 claim the same to be land bearing survey No. 33/3.

4. It appears that learned single judge, under order dated 9th November, 2009, taking into account contentions of the parties, had in paragraph No. 4 observed thus-

“ 4. *The factual disputes raised in the matter are required to be dealt with by Civil court and the parties are free to raise their contentions before the Civil Court. So far as entitlement of the petitioner is concerned, he has claimed his right in respect of property S. No. 33/3. Petitioner, in these circumstances will be entitled to tender an application without prejudice to the rights and contention raised by him in the civil suit, seeking appropriate permission from planing authority. Planning authority after following due procedure shall have liberty to accord appropriate permission in favour of the petitioner. So far as grievance raised by the Municipal council in respect of acts done by the petitioner which affects reserves sites, under pretext of permission accorded*

by Council, which in fact relates to S. No. 33/2, the Municipal Council shall have authority to take appropriate action. Petitioner shall restrict his activities only so far as property S. No. 33/3 which is claimed by him. With these observations petition stands disposed off. It is made clear that civil court, shall not be influenced by any of the observations made by this court while deciding instant petition and shall decide pending suit strictly in accordance with provisions of law. ”

5. It appears that respondents No. 1 to 3 have instituted Regular Civil Suit No. 160 of 2007 against several persons, *inter alia*, one Sudhakar Dahale, father of present appellants, for perpetual injunction seeking restraint on interference with the claimed possession of plaintiffs. It is being informed that said suit has been dismissed and appeal therefrom is pending.

6. Present respondents No. 1 to 3 had also instituted Regular Civil Suit No. 41 of 2008 seeking declaration that order dated 22nd February, 2008 passed by Municipal Council being illegal, null and void and for perpetual injunction from demolishing compound wall. It is being reported that said suit had been subsequently withdrawn.

7. Perusal of paragraph No. 4 of order passed by learned single judge dated 9th November, 2009, referred to above, shows that respondents No. 1 to 3 had been given liberty to apply for

appropriate permission from planning authority in their favour. As also the grievance of municipal council in respect of the acts of respondents No. 1 to 3, if those affect reserved sites and under the pretext of permission accorded by municipal council, if it in fact relates to some other survey number, municipal council had been authorized to take appropriate action.

8. Learned single judge has particularly referred to that the petitioners – respondents No. 1 to 3 herein shall restrict their activities only to property bearing land survey No. 33/3.

9. It is being reported that there have been other developments wherein some permissions have been refused to respondents No. 1 to 3 by the municipal council.

10. Division bench of this court, while admitting present letters patent appeal, under its order dated 14th October, 2010 had considered it appropriate that since civil court is seized with the issue, parties shall wait civil court's adjudication in respect of the claims pending before the civil court.

11. Having regard to facts and circumstances referred to above, while once the municipal council has taken a particular stand, the apprehension being expressed by the appellants that

the liberty to seek permission as given under paragraph No. 4 of the impugned order would affect them in land survey No. 33/1, is a matter which will have to be decided by appropriate forum. For said purpose, letters patent appeal does not appear would have any efficacy. We are, therefore, not inclined to interfere with the order passed by learned single judge. In view of above, we do not find it necessary to dwell upon contention raised on behalf of present respondents No. 1 to 3 with regard to maintainability of present letters patent appeal. Letters patent appeal is disposed of.

12. In view of aforesaid, cross objection is also disposed of.

[S. M. GAVHANE]
JUDGE

[SUNIL P. DESHMUKH]
JUDGE