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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6178 OF 2017

Ajay Prakash Ghate ..Petitioner.

V/s.

State of Maharashtra & Ors. ..Respondent.

Mr.Ajay A.Joshi for the petitioner.

Mr.Surel S.Shah for respondent No.4

CORAM : M.S.SONAK, J.

DATE : APRIL 1, 2019

ORAL JUDGMENT

Heard Mr.Joshi, learned counsel for the petitioner and Mr.Shah, learned counsel for respondent No.4.

2. Challenge in this petition is to the orders made by the learned trial Judge and the Appeal Court, *inter alia* directing the petitioner to demolish the construction undertaken on the said road despite the operation of status quo order which had directed the petitioner from doing so.

3. Mr.Joshi, learned counsel for the petitioner submits that the suit as well as interim relief was only for temporary injunction to restrain the petitioner from interfering with the access over the road of respondent No.4. He submits that there was no prayer for any mandatory injunction in

the suit. He submits that in the absence of any such substantive prayer, learned trial Judge as well as Appeal Court were not justified in issuing the order of mandatory injunction.

4. Mr.Joshi submits that the petitioner had already gifted portion of the property to the Panchayat for use as a road. He submits that once this portion was gifted, then the road was put in public use. He submits that the Panchayat has also supported the case of the petitioner by filing the written statement in the suit. He submits that both the Courts have not appreciated this issue in its proper perspective and, therefore, the impugned orders warrant interference.

5. Mr.Shah, learned counsel for respondent No.4 defends the impugned order on the reasoning reflected therein. He points out that the petitioner is an advocate who has purchased the suit property from his client and thereafter despite the status quo order, proceeded to make construction on the road. He submits that in such circumstances, it is the duty of both the Courts to order restoration of status quo. This is precisely what has been done in this matter. He relied upon the decision of the Supreme Court in the case of *Tanusree Basu and others V/s. Ishani Prasad Basu and others*[1] in support of his contention.

6. The rival contentions now fall for my determination.

7. In this case, the two Courts have concurrently held that the petitioner in breach of the status quo order has put up construction on the

1 **(2008) 4 Supreme Court Cases 791**

road in question. In the appeal memo, there are no specific statement as to when this construction was indeed carried out by the petitioner.

7. In this petition, the petitioner has pleaded at pages 11 and 12 of the paper-book (paragraph 8) purporting to explain that the status quo order which was granted on January 16, 2015 was not in existence between January 19, 2015 to June, 2015 and further the stay was not in existence from November 17, 2015 to April 28, 2015. Thereafter, an omnibus statement is made that it is during this period when the status quo was not in operation that the construction was carried out.

8. The two Courts have concurrently disbelieved such case put up on behalf of the petitioner. On the basis of a vague statement that the construction was carried out exactly during the period when the status quo order was not in operation, is certainly in defence to the charge that the construction was carried out in breach of status quo order. The petitioner is an advocate by profession and, therefore, understands the import of a status quo order. Since the two Courts have recorded concurrent findings and there is no perversity pointed out in the regard to such findings of fact, there is really no case made out to warrant interference

9. In the case of *Tanushree Basu (supra)*, the Honb'ble Supreme Court has held that if a party takes recourse to any contrivance to dispossess another, during the pendency of suit either in violation of the order of injunction or otherwise, the Court undisputedly will have

jurisdiction to restore the parties back to the same position. In the same decision, the Supreme Court has reiterated that the Court has inherent powers to grant injunction under section 151 of the Code of Civil Procedure ('the CPC' for short) even if the same is not covered under Order 39 Rules 1 and 2 of the CPC. In this case, the Court has only ordered restoration of the status quo ante since such status quo was altered by the petitioner despite restraint order. For these reasons, there is no necessary of having any prayer in the suit for mandatory injunction. The construction was put up by the petitioner during the pendency of the suit and that too in defiance of the status quo order. The two Courts were obviously in confirmation, to order status quo ante which was altered by the petitioner.

10. Accordingly, for all these reasons, this petition is dismissed. There shall be no order as to costs.

11. Mr.Joshi, learned counsel for the petitioner, at this stage requests for continuation of the interim order granted earlier. The interim order to continue to operate for a period of four weeks from today.

12 All concerned to act on the basis of an authenticated copy of this order.

(M.S.SONAK, J.)