

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.7044 OF 2019

Shree Siddivinayak Education and
Charitable Trust

... Petitioner

Vs.

Govind Balaya Patil and Ors.

... Respondents

.....

Mr. P.S. Dani, Senior Advocate I/b. Mr. Surel S. Shah for the
petitioner.

Mr. Kisan Sukre a/w Mr. Sandesh Deshpande for respondent
No.1.

.....

CORAM : M. S. KARNIK, J.

DATE : 13th SEPTEMBER, 2019.

P. C.:

1. The petition was heard on 9.9.2019 and the matter is posted today for petitioner to file an undertaking and passing orders. I have already heard Senior Counsel for the petitioner and learned counsel for the respondents.

2. The challenge in this petition is to an order dated 11.6.2019 passed by the Appellate Court partly allowing the Appeal and directing the parties to maintain status quo. The Appellate Court set aside order dated 16.11.2017 passed below Exhibit 5 by the Trial Court.

3. The present petition is at the instance of the original defendant No.8-Shree Siddhivinayak Education and Charitable Trust, Navi Mumbai. The respondent No.1-original plaintiff filed Special Civil Suit for declaration that the agreement dated 10.4.2006 and the development agreement dated 23.4.2007 executed by the defendant Nos.1 to 7 in favour of the plaintiff as legal, valid, subsisting and binding on all parties. A declaration is also sought by the plaintiff that the Deed of Conveyance dated 15.6.2006 executed by Late Shri Manik Ambo Daki in favour of defendant No.8 in respect of the suit property as illegal, null, void and not binding on the plaintiff. The respondent No.1-original plaintiff further prayed for temporary injunction and restraint orders against the defendants.

4. The application below Exhibit 5 filed by the plaintiff for injunction was heard by the Trial Court. By order dated 16.11.2017 the Exhibit 5 application was partly allowed and the defendant Nos.1 to 8 were restrained from creating interference and disturbing the possession of the plaintiff over the suit property in any manner till final disposal of the suit.

5 The petitioner-defendant No.8 filed Miscellaneous Civil Appeal No.84 of 2018 before the Appellate Court. The Appellate Court held that prima facie the balance of convenience is heavily tilted in favour of defendant No.8. The Appellate Court for the reasons mentioned further held that the impugned order passed by the Trial Court calls for interference.

6. My attention is invited to the findings recorded by the Appellate Court. I find that virtually all the findings are in favour of the defendant No.8 and against the plaintiff. However, while setting aside the impugned order passed below Exhibit 5, the Appellate Court directed the parties to maintain status quo on the suit property and further permitted the defendant No.8 to enter into the suit property without proceeding with the further construction of the School until further orders.

7. Learned counsel for the respondent No.1-plaintiff supported the order passed by the Appellate Court. He would submit that the Appellate Court is right in passing the status quo order in as much as if the construction is allowed to be proceeded with, the defendant No.8 would claim equity even if plaintiff's suit

is decreed in his favour. He would further submit that the suit will have to be decided on its own merits and in the meantime any change in the position of the suit property would act to the detriment of the plaintiff if he ultimately succeeds.

8. I have gone through the findings of the Appellate Court. The Appellate Court has set aside the order passed by the Trial Court. While doing so all findings, though prima facie in nature are recorded against the plaintiff and in favour of defendant No.8. In these circumstances, in my opinion, there was no reason for the Appellate Court to have directed the parties to maintain status quo on the suit property. The Appellate Court ordered that the defendant No.8 is free to enter into the suit property without proceeding with the further construction of the School until further orders.

9. The petitioner-defendant No.8 filed an undertaking to this Court that they will not create any third party right in respect of the suit property and further undertakes to carry out the construction on the suit property only for the purposes of running

the school. In clause (b) it is mentioned that during the pendency of the suit if the construction in the suit property is completed, the petitioner will not engage in the Admissions/Admission process of the students in the said school without prior leave of the learned Trial Court. It is further mentioned that the Trust undertakes that the petitioner-Trust will not claim any equity on the basis of the construction work done by the petitioner and will abide by the orders passed by the Trial Court.

10. The undertaking is accepted. The undertaking is taken on record and marked as “X-1” for identification.

11. The present petition is allowed in the following terms :-

A) The directions of the Appellate Court in Clause II of the operative portion of the order dated 11.6.2019 are set aside.

B) The parties to appear before the Trial Court and should co-operate for speedy disposal of the suit.

C) The Trial Court is requested to decide the suit as expeditiously as possible and in any event by the end of March 2020.

D) The undertaking of the petitioner on behalf of the Trust, trustees and its members in terms of the Resolution enclosed alongwith the undertaking is accepted.

(M. S. KARNIK, J.)