

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO. 1822 OF 2019
IN
WRIT PETITION (ST) NO. 35907 OF 2017

Shri Mohan Bhikaji Kharabe ... Applicant

Versus

The District Collector, Pune and Ors. ... Respondents

Mr. Sagar Kurrija i/by Mr. T.D. Deshmukh for the applicant.

Ms. K.N. Solunke, AGP for the respondent State.

CORAM : B.P. DHARMADHIKARI &
SANDEEP K. SHINDE, JJ.
DATE : SEPTEMBER 25, 2019

P.C.:

Heard learned counsel for the applicant and learned AGP for the state. Perused the application which is supported by affidavit. As we do not find any mala fides, we recall the order dated 1/3/2019 and restore the Civil Application No. 151 of 2019 back to file.

2. With the consent of the parties, we have taken up Civil Application No. 151 of 2019 in Writ Petition (St) No.35907 of 2019 for consideration. Civil Application No.151 of 2019 is filed for setting aside the conditional order dated 28/8/2018 passed by the Registrar (Judicial I) refusing to register the writ petition. We

have therefore, looked into the challenge in the writ petition. Petitioner claims to be in possession of the subject land and assails permission under section 44 of the Maharashtra Land Revenue Code granted to respondent no. 4 to change its user. During the hearing, we have noticed order dated 15/6/2015 passed on Civil Application No 1039 of 2012 in Second Appeal No.520 of 2012. It appears that in that Second Appeal, this court has protected the possession of the petitioner over the subject land.

3. As such, If the petitioner is in possession, the order of change of user cannot operate to his prejudice. However, keeping the contention of the petitioner open & with liberty to the petitioner to raise the same again if any cause of action arises, we dispose of the Civil Application No.151 of 2019. Consequently Writ Petition (St) No. 35907 of 2017 does not survive. The same is also disposed of.

(SANDEEP K. SHINDE, J.)

(B.P. DHARMADHIKARI, J.)