

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10650 OF 2017

Shri. Namdeo Ramchandra Patil and Others ...Petitioners

vs.

Shri. Suresh Bhausahab Somavanshi and Others ...Respondents

Mr. Shriram S. Kulkarni for the Petitioners

Mr. Anil Kumar K. Patil a/w. Mr. Rohan Kaiche, for Respondent
No. 1 and 2.

CORAM : M. S. SONAK, J.

DATE : APRIL 26, 2019

P.C.:

1. Heard Mr. Kulkarni for the petitioner and Mr. Patil for the respondent.

2. The challenge in this petition is to the order dated 08.08.2017 by which the Learned Trial Judge has granted police protection to the respondent to erect a barbed wire fencing as was permitted by order of the Learned District Judge.

3. Mr. Kulkarni Learned Counsel for the petitioner submits that objection to the Court Commissioner's report were pending and without deciding such objections, police protection ought not to have been granted. He submits that in fact this Court vide its order dated 27.09.2013 had also directed TILR to visit the suit site to measure and fix boundaries of the said property in respect of which suit is filed and thereafter carried out the actual object of

installment of fencing. He submits that suit is also now at advanced stage and therefore, direction may be issued for expeditious disposal of the suit. He submits that already the impugned order has been stayed by this Court by order dated 12.10.2017 with direction to decide the objection. For all this reasons, he submits that petition may either be disposed of by continuing the impugned order or may be set aside.

4. Mr. Anil Kumar Patil, Learned Counsel for the petitioner submits that no such objection has been filed to the Commissioner's report and that is the reason why no such application has not been produced before this Court. Since no application was filed, therefore there was no question of deciding such objection application. He submits that petitions are only instituted for the frustration of the interim order which has been granted to the respondent this should not be permitted. He therefore submits that this petition be dismissed with costs.

5. The rival contention now fall for my determination.

6. Mr. Kulkarni pointed out that in para. 15 of the petition a statement has been made that petitioners have filed separate application for taking objection to the report and petitioner claimed to refer to and rely upon said application. However, said application has neither been annexed to the petition nor same was produced at any subsequent stage.

7. In fact, upon query as to where is said application, Mr. Kulkarni submitted that in the application at page 74(Exhibit-M)

there are objections raised to the report of the Commissioner. The application at page 74 is nothing but a reply to application at Exhibit-150 by which the respondent had applied for police protection in order to avail the benefit of the order of District Court which was in fact affirmed by this Court subject to some modifications. Therefore, the document page 74 (Exhibit-M) cannot be regarded as application objecting to the Commissioner's report.

8. That apart, this Court, in its order dated 27.09.2013 had in fact refused to interfere with the impugned order made by the Learned District Court permitting the respondent to construct the fencing. The Court has already held that TILR should visit the suit site and depending upon the report of the TILR actual job of fencing should be carried out. The impugned order now merely permits the execution of the order made by the District Court which, in fact was affirmed by this Court. In such circumstances, it cannot be said that there is any jurisdictional error in the impugned order. In fact, the petitioners had no right to resist the installation of the fencing and thereby, force respondent to seek for police protection.

9. In this case the Learned District Judge has observed that installation of fencing, which is essentially, temporary in nature, will not amount to any prejudice to the petitioner. It is for this reason that only limited relief of installation of fencing was granted in favour of the respondent. Because, petitioner resisted such installation, Learned Trial Judge by the impugned order has granted police protection. Accordingly, there is no case made out to

interfere with the impugned order.

10. The request of Mr. Kulkarni that the suit itself be expedited, if expedited would indirectly amount to setting aside the relief granted by the District Court which was thereafter affirmed by this Court. The Petitioner cannot achieve indirectly what was refused to the petitioner directly. There is accordingly substance in the contention of the Mr. Anil Kumar Patil that entire object of the petitioner was to frustrate relief granted by the District Court and affirmed by this Court. Accordingly, this petition is liable to be dismissed and hereby dismissed. Interim was granted earlier is vacated.

11. This petition is already dismissed. The petitioner is directed not to obstruct the respondent from putting up the fencing and order of police protection which is impugned in this petition is also confirmed. The request to award of cost is not acceded. However, if there is resistance on part of petitioner and the respondents have to avail police protection, then costs towards such police protection will have to be borne by the petitioners. The Learned Trial Judge to then compute such costs and order the petitioner to pay the same to the respondents.

12. All the concerned are directed to act on the basis of an authenticated copy of this Order.

(M. S. SONAK, J.)