

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5151 OF 2020
WITH
CIVIL APPLICATION NO. 4822 OF 2020

SANJAY BHIKA PATIL AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

Mr. R.R. Mantri and Rahul R. Sancheti, Advocates for
petitioners.
Mr. R.B. Bagul, AGP for respondent Nos.1 and 2.
Mr. S.P. Brahme and Mr. Sushant Pandit, Advocate for
respondent No.3.
Mr. S.V. Advant, Advocate for respondent No.4.

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WITH
WRIT PETITION NO. 5152 OF 2020
WITH
CIVIL APPLICATION NO. 4827 OF 2020

GORAKH SAKHARAM PATIL AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Mr. R.R. Mantri and Rahul R. Sancheti, Advocates for the
petitioners.
Mr. R.B. Bagul, AGP for respondent Nos.1 and 2.
Mr. S.P. Brahme and Mr. Sushant Pandit, Advocate for
respondent No.3.
Mr. S.V. Advant, Advocate for respondent No.4.

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WITH
WRIT PETITION NO. 5153 OF 2020
WITH
CIVIL APPLICATION NO. 4823 OF 2020

NARENDRA RATAN CHAUDHARI AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

- 2 -

Mr. R.R. Mantri and Rahul R. Sancheti, Advocates for the petitioners.

Mr. R.B. Bagul, AGP for respondent Nos.1 and 2.

Mr. S.P. Brahme and Mr. Sushant Pandit, Advocate for respondent No.3.

Mr. S.V. Advant, Advocate for respondent No.4.

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WITH

WRIT PETITION NO. 5154 OF 2020

WITH

CIVIL APPLICATION NO. 4824 OF 2020

UMESH GORAKH PATIL AND OTHERS

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

Mr. R.R. Mantri and Rahul R. Sancheti, Advocates for the petitioners.

Mr. R.B. Bagul, AGP for respondent Nos.1 and 2.

Mr. S.P. Brahme and Mr. Sushant Pandit, Advocate for respondent No.3.

Mr. S.V. Advant, Advocate for respondent No.4.

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WITH

WRIT PETITION NO. 5155 OF 2020

WITH

CIVIL APPLICATION NO. 4821 OF 2020

BHARAT GOVIND PATIL AND OTHERS

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

Mr. R.R. Mantri and Rahul R. Sancheti, Advocates for the petitioners.

Mr. R.B. Bagul, AGP for respondent Nos.1 and 2.

Mr. S.P. Brahme and Mr. Sushant Pandit, Advocate for respondent No.3.

Mr. S.V. Advant, Advocate for respondent No.4.

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WITH
WRIT PETITION NO. 5156 OF 2020
WITH
CIVIL APPLICATION NO. 4826 OF 2020

ASHOK SOMJI PATIL AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

Mr. R.R. Mantri and Rahul R. Sancheti, Advocates for the
petitioners.
Mr. R.B. Bagul, AGP for respondent Nos.1 and 2.
Mr. S.P. Brahme and Mr. Sushant Pandit, Advocate for
respondent No.3.
Mr. S.V. Advant, Advocate for respondent No.4.

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WITH
WRIT PETITION NO. 5157 OF 2020
WITH
CIVIL APPLICATION NO. 4828 OF 2020

UDDHAV RATILAL PATIL AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

Mr. R.R. Mantri and Rahul R. Sancheti, Advocates for the
petitioners.
Mr. R.B. Bagul, AGP for respondent Nos.1 and 2.
Mr. S.P. Brahme and Mr. Sushant Pandit, Advocates for
respondent No.3.
Mr. S.V. Advant, Advocate for respondent No.4.

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WITH
WRIT PETITION NO. 5158 OF 2020
WITH
CIVIL APPLICATION NO. 4825 OF 2020

GORAKH SAKHARAM PATIL AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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MR. R.R. Mantri and Rahul R. Sancheti, Advocates for the petitioners.

Mr. R.B. Bagul, AGP for respondent Nos.1 and 2.

Mr. S.P. Brahme and Mr. Sushant Pandit, Advocate for respondent No.3.

Mr. S.V. Advant, Advocate for respondent No.4.

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CORAM : V.L. ACHLIYA, J.

RESERVED ON : 25.08.2020

PRONOUNCED ON :13.10.2020

PER COURT :

By these group of petitions filed under Articles 226 and 227 of the Constitution of India, the petitioners – original plaintiffs have challenged the interim orders dated 08.07.2020 passed in Misc. Civil Appeal Nos.1/2020 to 8/2020 by learned District Judge, Nandurbar. By the impugned orders, the learned District Judge has rejected the applications (Exh.5) filed in those Misc. Appeals seeking temporary injunction to restrain defendants to proceed with the work of construction of public road passing by the side of agricultural fields of the petitioners-plaintiffs till hearing and disposal of appeals.

2] For the sake of convenience the parties are

referred as they referred in the respective suits. The petitioners – plaintiffs have filed suits simplicitor for injunction claiming prohibitory injunction to restrain defendants to carry out road widening work of existing Nandurbar-Prakasha road without initiating process of acquisition of land and construction of water channel/chari by the side of road. Pending disposal of the suits filed, the plaintiffs have filed application under Order XXXIX Rule 1 and 2 of Code of Civil Procedure seeking temporary injunction claiming reliefs as claimed in the suits.

3] The plaintiffs have approached with the case that they are the owners and in possession of the land bearing Gat Nos. 146/1-A, 146/1-B and 146/2 situated at village Korit, Taluka and District Nandurbar. According to the plaintiffs, there is old existing Nandurbar-Prakasha road which passes beyond the western boundary of their respective fields. The said road is in existence from long time. The defendants have commenced the work of road widening of said Nandurbar-Prakasha road without carrying out measurement and initiating the process of acquisition of lands. The defendants have destroyed the

bandh of their respective lands for the purpose of road widening work. It is the contention of the plaintiffs that due to illegal act of destroying the bandh of the agricultural fields of the plaintiffs, there is every likelihood that water to be accumulated on road to enter into their respective fields and to damage the crops. In the background of facts pleaded in the respective suits, it is contended that the defendants are acting in high-handed manner in carrying out the widening of existing tar road. They have encroached over the suit lands of the plaintiffs. The said work has been initiated without carrying out measurement in presence of the plaintiffs and initiating acquisition proceedings.

4] The defendants have resisted the applications seeking temporary injunction by filing their reply / written statement. They have denied the case put forth by the plaintiffs of destroying the bandh of the plaintiffs' field as well as encroachment over the land of the plaintiffs. In short, it is the case of defendants that the work in progress at the suit site i.e. at village Korit is a part of development work of National Highway No.752G i.e. Visarwadi-Nandurbar-

Prakasha-Shahada-Khetiya Road. The Ministry of Road Transport and Highways, Government of India, vide communication dated 21.10.2017 addressed to the Secretary, PWD, Government of Maharashtra, Mumbai, communicated its decision of sanctioning the estimate of upgradation of two lane with paved shoulders of Visarwadi-Nandurbar-Prakasha-Shahada-Khetia section of National Highway No.752-G on EPC mode. It is submitted that road passing by the side of plaintiffs' field is a part of said road, the development of which undertaken by the defendants. It is submitted that Nandurbar-Prakasha road is a State Highway and in existence for a long time. It is 30 meter wide road. By virtue of the work undertaken the existing tar road is going to be made cement concrete road. For the purpose of upgradation of road at suit site no acquisition of land of any person including the plaintiffs is involved. The construction of road at the suit site is a part of tender allotted in respect of 54 kilo meters road passing by the side of fields of the plaintiffs. It is a work of rehabilitation and upgradation of existing State Highway of two lane with paved shoulders / four lane configuration on EPC

mode. The said work commenced w.e.f. March, 2017. At the suit sites the defendants are not required to acquire any land for upgradation of the said road. The entire development activities are within the area of land vested with the defendants. The defendants are carrying out the development activities within the land width and length of the road.

5] The defendants have approached with the case that the width of the existing road is 30 meters. From the mid of the road, there is 15 feet road in existence on both the sides of road. The agricultural field of the plaintiffs are located beyond the 30 meters existing road. The plaintiffs have encroached upon the part of the land belonging to defendants forming part of the existing road and started cultivating the lands over the encroached portion. In order to protect their illegal acts, the plaintiffs have filed suits making false and misleading statements to anyhow continue their illegal act of encroachment over the land forming part of the existing road. The defendants have asserted that neither the prima facie case nor the balance of convenience and test of irreparable loss exists in favour of plaintiffs.

So also in equity no injunction to be granted in favour of the plaintiffs. They have also contended that the suits filed by the plaintiffs are not maintainable. The plaintiffs have produced no evidence to show the act of encroachment on the part of the defendants. In the suits filed the plaintiffs have not described the area alleged to be encroached nor any plaint map have been filed in respective suits showing the encroachment over the part of the land owned by plaintiffs. The suits have been filed by making vague allegations of encroachment. The defendants have contended that even in equity no case lies in favour of the plaintiffs to claim injunction including temporary injunction as the work undertaken by the defendants is a part of Infrastructure Development project involving huge investment and spending public money and grant of temporary injunction would stall the public development resulting huge escalation in price. The defendants have pleaded to dismiss the suits as well as applications seeking temporary injunction.

6] The suits were filed in the year 2018. Pending hearing and disposal of suits the plaintiffs have filed applications seeking temporary injunction. The trial

Court granted ad-interim order and directed parties to maintain status-quo. After hearing the parties the learned Civil Judge Senior Division, Nandurbar vide order dated 02.01.2020 separately passed in each of the suits rejected the applications seeking temporary injunction. It is held that neither the prima facie case nor balance of convenience as well as test of irreparable loss lies in favour of the plaintiffs to grant temporary injunction.

7] Being aggrieved by the order dated 02.01.2020 the plaintiffs have preferred Misc. Appeals under Order XLIII rule 1 [r] of Code of Civil Procedure challenging the orders rejecting the applications seeking temporary injunction. In the appeals filed, the plaintiffs have filed applications Exhibit-5 seeking temporary injunction to restrain the defendants from proceeding with the road development work till disposal of appeals. By order dated 08.07.2020 learned Ad-hoc District Judge, Nandurbar rejected the applications Exh.5 filed in respective appeals. Being aggrieved, petitioners – plaintiffs have preferred these petitions under Articles 226 and 227 of the Constitution of India.

8] In brief, it is the contention of learned counsel for the petitioners that the impugned orders passed by the Courts below are perverse and unsustainable in law. Learned counsel contended that the Courts below have failed to consider the report of D.I.L.R. submitted in the capacity as Court Commissioner. It is submitted that report submitted by the D.I.L.R. with maps have presumptive value under the provisions of Indian Evidence Act. Till the time presumption is rebutted, map prepared and submitted by the D.I.L.R. showing encroachment made by the defendants over the agricultural fields of the plaintiffs ought to have been relied in favour of plaintiffs to trace the prima facie case in their favour. It is submitted that the act of defendants to proceed with the road widening work without initiating acquisition proceeding is a high-handed act on the part of defendants. By taking law in hand, the defendants are proceeding with the road widening work. They have destroyed the bandh of agricultural field of the plaintiffs. No provision has been made to construct the *chari* / water channel for the passage of rainy water collected on road. In absence of provision made for

drainage of rainy water to be accumulated on road, it may enter into fields of the plaintiffs and cause damage to the crops in their fields. It is submitted that the appellate Court erred in rejecting the applications by keeping the appeals pending for hearing. It is submitted that if the road widening work is completed, the appeals preferred by the appellants become infructuous. In the facts and circumstances of the case, learned counsel submits that prima facie case, balance of convenience and test of irreparable loss lies in favour of the plaintiffs. In support of the submissions advanced, learned counsel has referred and relied upon the following rulings :-

- (i) Shamrao Ganpat Chintamani V/s Kakasaheb Laxman Gorde [2008 (2) Mh.L.J. 819]
- (ii) Dhruba Charan Parida V/s State of Orisa and others [AIR 2003 Orisa 219]
- (iii) Great Easten Energy Corporation Ltd. V/s Jain Irrigation System Ltd., [2010 (4) Mh.L. J. 759]
- (iv) Mansharam V/s Dhule Nagar Palika [1994 Mh.L.J. 806]

- (v) Baniram Ramgopal Gupta V/s Maharashtra Housing and Area Development Board [1996 (1) BCJ 36]
- (vi) Hariyana Financial Corporation V/s Jagdamba Oil Mills [2002 DGLS (SC) 113]

9] On the other hand, Shri S.V. Advant, learned counsel for the respondent no.4 opposed admission of petitions with contention that the orders passed by Courts below are based upon due appreciation of rival pleadings and evidence placed in support of the applications seeking temporary injunction. It is submitted that the orders passed by Courts below cannot be subject matter of challenge in the petition filed under Article 226 of the Constitution of India. It is submitted that the scope of exercise of powers confines to limited jurisdiction vested under Article 227 of the Constitution of India. In that view, the scope of exercise of powers restrict to examine as to whether the orders under challenge suffers from any error in law. In exercise of jurisdiction under Article 227 of the Constitution of India, this Court cannot sit in appeal over the concurrent orders passed by Courts below. In

this context, the learned counsel has referred and relied upon the decision of Apex Court in the case of [1] *Essen Deinki v. Rajiv Kumar* reported at [(2002) 8 SCC 400] and [2] *Inbasagaran v. S. Natarajan* reported at [(2015) 11 SCC 12].

10] It is contended that both the Courts below have decided the applications filed under Order XXXIX Rules 1 & 2 of the CPC upon assessment of rival pleadings and evidence produced in support of applications in the light of settled proposition of law. So also the orders passed by the Courts below are interlocutory orders and passed on primary consideration such as *prima facie* case, balance of convenience and conduct of parties, test of irreparable loss. Therefore, in absence of jurisdictional error, and error in law, this Court in exercise of its supervisory jurisdiction cannot entertain the challenge raised to the correctness of impugned orders. The Courts below have consistently held that neither *prima facie* case nor balance of convenience and test of irreparable loss lies in favour of plaintiffs. It is submitted that the impugned orders are quite consistent with the settled

proposition in law and in that view, the orders calls for no interference of jurisdiction under Article 227 of the Constitution of India. In support of the submission made, learned counsel has referred and relied upon decisions in the case of [1] *Anand Prasad Agarwalla v. Tarkeshwar Prasad* reported at [(2001) 5 SCC, 568] and [2] *Zenit Mataplast Private Limited v. State of Maharashtra & others* reported at [(2009) 10 SCC 388].

11] It is further submitted that it is settled position in law that the law Courts should be slow in granting injunction against public projects as against the private proprietary interest or the interest of few individuals. While considering injunction against the public projects, the law Courts are expected to consider the enormous rise in price. The law Courts also to consider the escalation of price at the end of litigation and consequences affecting the public interest. So also the Courts of law expected to take into consideration the consequences and damage likely to be caused on account of grant of injunction to the public at large as well as to the Government. In this context, the learned counsel has

referred and relied upon decision of the Apex Court in the case of ***Mahadeo Savlaram Shelke v. Pune Municipal Corporation*** reported at [(1995) 3 SCC, 33].

12] It is submitted that the work in question is a public project undertaken for the public road and public welfare and, therefore, the Courts below justified in refusing to grant temporary injunction to stall the Infrastructure Development work. It is submitted that the suits filed by the plaintiffs are expressly barred under Section 20-A r/w Section 41(h)(a) of the Specific Relief Act. It is submitted that the legislative intent behind introducing Sections 20-A, 20-B and 20-C in the Specific Relief Act was to ensure that Infrastructure Development projects are not delayed on account of pendency of Court proceedings or on account of orders in such Court proceedings. In this background, it is submitted that the suits filed by plaintiffs are not maintainable in law and there is express bar operate under said provision to entertain the suits filed by plaintiffs.

13] It is further submitted that the reliefs claimed in the suits as well as applications filed under Order XXXIX Rules 1 & 2 are one and the same. The grant of temporary injunction itself amounts to grant of reliefs claimed in respective suits without trial being conducted. In that view, also there is no perversity in the orders passed by the Courts below in rejecting the applications seeking temporary injunction during pendency of proceedings.

14] It is submitted that the report of D.I.L.R. can be considered only after parties to the suits adduce evidence. The said report cannot form the basis to grant injunction. It is submitted that the view taken by the Courts below is quite consistent with the law. It is submitted that it is quite settled position in law that the Court Commissioner cannot be appointed for collecting the evidence in exercise of powers under Order XXVI Rule 9 of the CPC. By referring the order of appointment of Commissioner, the learned counsel submits that the application was opposed by defendants with contention that no such application seeking appointment of

Commissioner can be entertained at the preliminary stage of deciding the application seeking temporary injunction. In spite of that, the Court has appointed the D.I.L.R. On the face of record, the report of D.I.L.R. cannot be accepted as a basis to support the case of the plaintiffs. The plaintiffs have produced no independent documentary evidence to support the pleadings. In the plaint, even there are no specific averments as to encroachment and exact area of encroachment made by defendants in to agricultural lands of plaintiffs. So also no plaint map was filed. In that view, the Courts below were justified in refusing to grant injunction by holding that no *prima facie* case exists in favour of plaintiffs. In support of the submission that the Court Commissioner cannot be appointed to collect the evidence, the learned counsel has referred and relied upon the decision of this Court in the case of ***Sanjay Namdeo Khandare v. Sahebrao Kachru Khandare & others*** reported at 2001 (2) Mh.L.J., 959.

15] So far as factual aspects of the case is concerned, the learned counsel submits that there is

existing 30 Meters wide old Nandurbar Prakasha road. It is a State Highway. As per the standards laid down, the width of the State Highway is provided as 30 Meters. It is further submitted that the State of Maharashtra has sanctioned the road development plans from 1961-1981, 1981-2001 and 2001-2021 for the State. The Government has given sanction to said plans and same are public documents. It is submitted that the road in question is part of construction of Visarwadi-Nandurbar-Kolde-Shahada to Khetia road undertaken by the M.S.R.D.C., which is a State Highway and in existence from the year 1961. The road development plan for Dhule district was prepared for the year 1981-2001. The road development plan for Nandurbar District is prepared for the year 2001-2021 by the Public Works Department, State of Maharashtra, which shows the width of Visarwadi-Nandurbar-Prakasha-Shahada-Khetia road as a State Highway with a total width of road as 30 Meters. The said road is under rehabilitation and upgradation. The Ministry of Shipping and Transport (Road Wing), Government of India, had issued consolidated guidelines on 13.1.1977 to all the States stating therein that the land width for different class of roads be in

meters and State / National Highways in urban area shall be minimum 30 Meters wide. It is submitted that *vide* notification dated 3.1.2017 issued u/s 2(2) of the National Highways Act, 1956, the Central Government, Department of Road Transport and Highways, declared each of highways specified in column 3 of the table appended to it as a National Highway. In said table, at Sr.No.356 the Visarwadi-Nandurbar-Prakasha-Shahada-Khetia road has been included as highway and to be upgraded. The Ministry of Road Transport and Highways, Government of India *vide* communication dated 21.2.2017 addressed to Secretary, P.W.D., Government of Maharashtra, Mumbai, communicated sanctioning the estimate of upgradation of two lane with paved shoulders of Visarwadi-Nandurbar-Prakasha-Shahada-Khetia section of National Highway No.752-G for EPC mode. In this background, the learned counsel submits that part of the road, which is subject matter of suits is a State Highway with 30 Meters wide.

16] It is submitted that the work order in respect of road admeasuring 54 Kms. was issued in favour of respondent no.3 on 31.3.2017. The road passing by side

of agricultural fields of plaintiffs i.e. the part of said road require the work of rehabilitation and upgradation of existing State Highway in two lane with paved shoulders / four lane configuration on EPC mode. The work of road has commenced from the month of March, 2017. The petitioners have filed suits after more than one year of commencement of work. As per the record maintained by the Public Works Department, the land width of the road has not been altered and tender floated by MSRDC is for rehabilitation and upgradation of the existing road. In that view, the defendants are not required to acquire any land for upgradation of said State Highway. There is no re-alignment or geometrical improvement in the road requiring acquisition of land of plaintiffs. In this background, the learned counsel submits that there is absolutely no illegality or high-handedness on the part of defendants in upgradation of existing road. The defendant nos.3 & 4 are working within the land width and the length of the road. So also 70% of feasible work of road has been completed. The claims made by the petitioners – plaintiffs are unsustainable in law and the Courts below have rightly

rejected temporary injunction applications. In this background, the learned counsel submits that the petitions filed are devoid of merits and calls for no interference in exercise of limited jurisdiction vested with this Court under Article 227 of the Constitution of India.

17] Shri S.P. Brahme, learned counsel representing the respondent no.3 supported the orders passed by the Courts below. It is submitted that the petitions filed are devoid of merits. The orders passed by the Courts below are legal, proper and within the bounds of law, which call for no interference in exercise of writ jurisdiction under Article 227 of the Constitution of India. It is submitted that the work of upgradation and construction of cement concrete road in place of existing road admeasuring 54 Kms. in length has been allotted to the respondent no.3/defendant no.3. Out of the work allotted, 70% work has been completed. Because of the suits filed by plaintiffs, the work of 2 Kms. of road is stalled. It is further submitted that there is no *prima facie* case, balance of convenience and irreparable loss

exist in favour of plaintiffs. The Courts below have duly assessed the pleadings and evidence and rejected the applications seeking temporary injunction. The learned counsel submits that the report of D.I.L.R. cannot form the basis to grant temporary injunction in favour of the plaintiffs. The Court Commissioner cannot be appointed before recording evidence of the parties as well as collecting evidence for the parties. The scope of exercise of powers under Order XXVI Rule 9 of the CPC confines to assessment of evidence. The learned counsel has referred and relied upon judgment and order dated 31.7.2017 passed in **Writ Petition No.9626/2016** in the case of ***Sitaram Suklal Patil & another v. Vasudeo Suklal Patil.***

18] It is submitted that there is express bar to entertain the suit u/s 20-A of the Specific Relief Act. Section 20-A of the Specific Relief Act expressly provides that no injunction to be granted by the Court, where a contract relating to infrastructural project is involved and particularly where the grant of injunction would act as impediment or cause delay in progress or

completion of such infrastructural project. It is submitted that schedule appended to said provision covers the project which is allotted to the defendant no.3 and subject matter of suits.

19] I have carefully considered the submissions advanced in the light of rival contentions and orders passed by Courts below. By the present petitions filed under Articles 226 and 227 of the Constitution of India, the petitioners have challenged the concurrent decisions rendered by the Courts below, which refused to grant temporary injunction in favour of plaintiffs and to stall the work of road project.

20] In brief, it is the case of the petitioners – plaintiffs that the defendants are acting in high-handed manner and constructing the road by encroaching over portion of their agricultural land without conducting measurement and initiating process for acquisition of land. Whereas the defendants have approached with a case that the suits filed by the petitioners – plaintiffs are without any basis and supporting evidence to substantiate the claim in the suits. In brief, it is the contention

of defendants that there is existing Nandurbar-Prakasha State Highway road which is 30 Meters wide. By the work allotted to defendant no.3, the defendant no.4 has undertaken the work relating upgradation of existing road at the suit site. As per the allotment of work the existing tar road is to be upgraded as cement concrete road. It is a specific case of defendants that width of existing road is 15 meters on both the side from the corner of existing road and the work of upgradation of road from tar road as concrete road strictly confines to 30 meters wide road in existence. They are not required to acquire any land belonging to plaintiffs. The plaintiffs have filed suits with malafide intention to any how protect their unauthorized act to cover the portion of existing road and use the same for cultivation. The suits are filed without any measurement and evidence showing encroachment made over the suit lands of plaintiffs. The Courts below refused to grant temporary injunction in favour of plaintiffs on due consideration of rival pleadings and supporting evidence placed by the plaintiffs to substantiate the claim in respective suits. It is observed that neither the prima

facie case nor balance of convenience and test of irreparable loss exist in favour of plaintiffs. It is consistently observed that except the D.I.L.R. report which is based upon measurement of land pursuant to application made by the plaintiffs, there is no evidence including plaint map to prima facie show that defendants have encroached over the land belonging to plaintiffs.

21] The petitioners have prayed for issuance of writ of *certiorari* to quash the impugned orders. It is quite settled position in law that the judicial orders of civil Court are not amenable to writ jurisdiction under Article 226 of the Constitution of India. The challenge to judicial orders lie by way of statutory appeal or revision or under Article 227 of the Constitution of India, but not by way of writ under Article 226 or 32 of the Constitution of India. In this context, reliance can be placed on the decision of the Apex Court in the case of *Radhey Shyam & another v. Chhabi Nath & others* reported at (2015) 5 SCC 423. In paragraph nos.20 and 21, the Hon'ble Apex Court has observed as under :-

"20. This Court in judgment dated 6-2-1989 in *Qamruddin v. Rasul Baksh* [(1990) 1 AWC 308

(SC)] which has been quoted in the Allahabad High Court judgment in *Ganga Saran v. Civil Judge, Hapur* (AIR 1991 All 114) considered the issue of writ of certiorari and mandamus against interim order of the civil court and held: (*Qamruddin case*, (1990) 1 AWC, 309 - para 4)

"4. ... If the order of injunction is passed by a competent court having jurisdiction in the matter, it is not permissible for the High Court under Article 226 of the Constitution to quash the same by issuing a writ of certiorari. In the instant case the learned Single Judge of the High Court further failed to realize that a writ of mandamus could not be issued in this case. A writ of mandamus cannot be issued to a private individual unless he is under a statutory duty to perform a public duty. The dispute involved in the instant case was entirely between two private parties, which could not be a subject-matter of writ of mandamus under Article 226 of the Constitution. The learned Single Judge ignored this basic principle of writ jurisdiction conferred on the High Court under Article 226 of the Constitution. There was no occasion or justification for issue of a writ of certiorari or mandamus. The High Court committed

serious error of jurisdiction in interfering with the order of the District Judge."

21. Thus, it has been clearly laid down by this Court that an order of the civil court could be challenged under Article 227 and not under Article 226."

22] In view of the legal position discussed above, the petitions filed by the petitioners challenging the impugned orders under Article 226 of the Constitution of India cannot be entertained.

23] Now the next question poses for consideration whether the impugned orders suffer calls for interference in exercise of powers of superintendence vested with this Court under Article 227 of the Constitution of India. It is settled position in law that exercise of jurisdiction under Article 227 of the Constitution of India is limited and restrictive in nature and to be used sparingly in appropriate cases in order to keep the subordinate Courts within the bounds of their authority and not for correcting mere errors. In this context, reliance can be placed on the decision of the Apex Court in the case of

Waryam Singh & another v. Amarnath & another reported at AIR 1954 SC 215.

24] Similarly, it is also settled position in law that in exercise of powers under Article 227 of the Constitution of India, the High Court have no powers to invoke its powers of superintendence under Article 227 of the Constitution of India as the findings of facts of recorded by inferior Court or the Tribunal found to be based upon no evidence to justify such conclusion and same are totally perverse. In this context, it is useful to refer the decision of Apex Court in the case of ***Mani Nariman Daruwala @ Bharucha (deceased) through L.Rs. & others v. Phiroz N. Bhatena & others*** reported at [(1991) 3 SCC 141], wherein Hon'ble Apex Court has observed as under:-

"18. Was the High Court justified in taking this view and in upsetting the finding recorded by the appellate bench ? While considering this question it has to be borne in mind that the High Court was exercising its jurisdiction under Article 227 of the Constitution of India. In the exercise of this jurisdiction the High Court can set aside or ignore the findings of

fact of an inferior court or tribunal if there was no evidence to justify such a conclusion and if no reasonable person could possibly have come to the conclusion which the court or tribunal who has come or in other words it is a finding which was perverse in law. Except to the limited extent indicated above the High Court has no jurisdiction to interfere with the findings of fact. (see: *Chandavarkar Sita Ratna Rao v. Ashalata S. Guram* (1986) 4 SCC 447). Applying these tests we are unable to persuade ourselves to hold that the findings recorded by the appellate bench suffer from such an infirmity so as to justify interference with the said finding under Article 227 of the Constitution."

25] Learned counsel for the defendants has referred and relied upon decision of Hon'ble Apex Court in the case of *Essen Deinki v. Rajiv Kumar* reported at [(2002) 8 SCC 400], wherein the Hon'ble Apex Court has considered the scope of exercise of jurisdiction under Article 227 of the Constitution of India and held as under:-

"Exercise of jurisdiction under Article 227 of the Constitution is limited and restrictive in nature. It is so exercised in normal circumstances for

want of jurisdiction, errors of law, perverse findings and gross violation of natural justice to name a few. It is merely a revisional jurisdiction and does not confer an unlimited authority or prerogative to correct all orders or even wrong decisions made within the limits of the jurisdiction of the courts below. The finding of fact being within the domain of the inferior tribunal, except where it is a perverse recording thereof or not based on any material whatsoever resulting in manifest injustice, interference under the article is not called for.

It is clear that error must be that of law and patently on record committed by the inferior tribunal so as to warrant intervention. It ought not to act as a court of appeal."

26] It is also quite settled that while dealing with petition filed under Article 227 of the Constitution of India, jurisdiction of this Court is limited and confined to powers of superintendence. The Court is not expected to sit in appeal over the orders passed by Courts below. Exercise of jurisdiction under Article 227 of the Constitution of India is on par with the revisional jurisdiction vested with the Court.

27] Having considered the submissions advanced in

the light of concurrent orders passed by Courts below to refuse to grant temporary injunction in favour of plaintiffs, I am of the view, the orders passed neither suffers from jurisdictional error or error in law. So also there is no perversity in the findings recorded by Courts below to call for exercise of powers of superintendence under Article 227 of the Constitution of India. In exercise of powers under Article 227 of the Constitution of India, this Court cannot sit in appeal over the orders passed by the Courts below. The powers to grant temporary injunction is in nature of discretionary relief to be exercised on sound principles of law. The Courts below have examined the case on the touch-stone of settled principles laid down in the matter of grant of temporary injunction and examined the case from the point of view of existence of prima facie case, balance of convenience and test of irreparable loss. The findings of facts recorded by the Courts below being based upon due appreciation of rival pleadings and material evidence calls for no interference in exercise of writ jurisdiction under Article 227 of the Constitution of India.

28] In the case of **Skyline Education Institute V/s S.N.Vaswani** (AIR 2010 SC 3221), the Apex Court has observed that once the Court of first instance exercises its discretion to grant or refused to grant relief of temporary injunction and said exercise is based upon objective consideration of the material placed before the Court and is supported by cogent reasons, the appellate Court will be loath to interfere simply because on a denovo consideration of the matter it is possible for the appellate Court to form a different opinion on the issues of prima facie case, balance of convenience, irreparable injury and equity. It is further observed that unless the appellate Court comes to conclusion that discretion exercised by the trial Court in refusing to entertain the prayer for temporary injunction is vitiated by an error apparent or perversity and manifest injustice has been done, there will be no warrant of exercise of powers by the appellate Court. In my view, in the instant case the appellate Court while passing the impugned orders has found no perversity, error of law and manifest injustice so as to take view contrary to view taken by trial Court. In that view, the orders passed in exercise of judicial

discretion vested with the Courts below on sound principles of law calls for no inference in exercise of writ jurisdiction under Article 227 of the Constitution of India.

29] On due consideration of overall facts of the case, submissions advanced and challenge raised in the petitions, I am of the view, the impugned orders suffers from no jurisdictional error nor the orders passed by the Courts below can be termed as perverse so as to call for interference in exercise of writ jurisdiction under Article 227 of the Constitution of India. Prima facie, the orders passed are based upon due appreciation of rival pleadings, the evidence relied in support of the case of plaintiffs and broad principles of law regulating grant of temporary injunction. There is no perversity in the findings recorded by the Courts below to call for interference in exercise of jurisdiction vested under Article 227 of the Constitution of India.

30] In view of the appeals challenging the impugned orders pending before the appellate Court, it is not desirable for this Court to make any observations as to

merits of the case of petitioners as well as the defendants. Thus the challenge in petitions have been examined within the scope of exercise of powers of superintendence vested with this Court. As discussed, the impugned orders neither suffers from jurisdictional error nor error of law. So also the impugned orders cannot be termed as perverse so as to call for interference in exercise of writ jurisdiction under Article 227 of the Constitution. I am therefore not inclined to entertain the petitions.

31] In the result, the petitions are dismissed with no order as to costs. The appellate Court is directed to expedite the hearing of the appeals and make endeavour to decide the same as expeditiously as possible and preferably within six months. Pending civil applications, if any, stand disposed of in terms of order passed in the petitions.

(V.L. ACHLIYA, J.)

At this stage, Mr. R.R. Mantri, learned counsel for the petitioners requested to issue directions to the respondents not to cause any harm to standing crops in

the field of the petitioners till harvesting season is over. He submits that the harvesting season will be over by the end of December, 2020.

2. Mr. Brahme learned counsel for the respondent no.3 and Mr.Adwant, learned counsel for respondent no.4 opposed the issuance of such direction and submit that the issuance of such direction would affect the implementation of public project of construction of road, the work of which to be completed within stipulated period.

3. In view of the overall facts of the case and the Courts below have by concurrent orders refused to grant injunction, I am not inclined to issue the directions as urged by the learned counsel for the petitioners. However, the Respondent Nos.3 and 4 are directed to ensure that no damage be caused to the standing crop if the petitioners complete the process of harvesting by the end of 15th November, 2020.

(V.L. ACHLIYA, J.)