

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 8910 OF 2019

Fermi Solarfarms Pvt Ltd. Thane
Having Corporate Office at :
406, 4th Floor, Hubtown Solaris,
N.S. Phadke Marg, Andheri
East Mumbai 400 069.

Registered Address at :
3rd Floor, PTI Building,
4, Parliament Street,
New Delhi- 110 001
Through Authorized Signatory
M/s. Go. Renewable Energy Pvt. Ltd.
Thane, Pan No. AAFCG8419D,
Company Reg. No. U40300 MH 2014,
PTC 260350
Address: 701/04, Wimblendon Park,
Pokhran, Road No. 1, Near Candhbury
Company, Thane (W) 400606.

... **Petitioner.**

VERSUS

1. Smt. Nabibai Harsing Rathod,
Age 88 years, Occ. Household.
 2. Shri. Uttam Harsing Rathod,
Age 62 years, Occ. Agriculture.
 3. Shri. Madan Harsing Rathod,
Age 58 years, occ. Agriculture.
 4. Shri. Raghunath Harsing Rathod,
Age 53 years, Occ. Agriculture &
Service.
All R/o. At Post Bodhare (Mothe)
Tq. Chalisgaon, Dist. Jalgaon.
 5. Shri. Rohidas Harsing Rathod,
Since deceased through legal heirs :
- 5a) Muktabai Rohidas Rathod,

Age 40 years, Occ. Agriculture
R/o. At Post Bodhare, Tq. Chalisgaon,
District Jalgaon.

- 5b) Nirmala Rohidas Rathod
@ Sau. Nirmala Yuvraj Pawar,
Age 27 years, Occ. Household,
R/o. At post Tardi Tanda, Pachora,
Tq. Pachora, Dist. Jalgaon.
- 5c) Kastura Rohidas Rathod
@ Kastura Kishore Chavan,
Age 25 years, Occ. Household,
R/o. Bhati Tanda, Kannad,
Tq. Kannad, Dist. Aurangabad.
- 5d) Kiran Rohidas Rathod,
Age 25 years, Occ. Education,
R/o. Bodhare (Mothe) Tq. Chalisgaon,
District Jalgaon.
- 5e) Usha Rohidas Rathod, Age 19 years,
Occu. Household, R/o. Bodhare (Mothe)
Tq. Chalisgaon, District Jalgaon.
- 5f) Pavan Rohidas Rathod,
Age 14 years, Minor through natural
guardian mother Muktabai Rohidas
Rathod, R/o. Bodhare (Mothe) Tq. Chalisgaon,
District Jalgaon.
- 6) Smt. Reshmibai Nathu Jadhav,
Age 60 years, Occ. Household,
R/o. At/Post Bodhare (Mothe) Tq. Chalisgaon,
District Jalgaon.
- 7) Smt. Taibai Ekanath Chavan,
Age 51 years, Occ. Household,
R/o. Ganpurwadi, Tq. Chalisgaon,
District Jalgaon.
- 8) Shri. Popat Babu Chavan,
Age 45 years, Occ. Agriculture.
- 9) Shri. Shivaji @ Shiva Babu Chavan,
Age 38 years, Occ. Agriculture,

Both No. 8 & 9 r/o. Rampuriwadi,
Tq. Kannad, District Aurangabad.

- 10) Shri. Subhash Narsing Rathod,
Age 56 years, Occ. Agriculture.
- 11) Kashinath Narsing Rathod,
Age 53 years, Occ. Agriculture.
- 12) Shri. Bhimrao Narsing Rathod,
Age 51 years, Occ. Agriculture.
- 13) Shri. Bhaskar Narsing Rathod,
Age 46 years, Occ. Agriculture.
No. 10 to 13 R/o. Bodhare (Mothe),
Tq. Chalisgaon, District Jalgaon.
- 14) Sau. Maibai @ Maubai Dattu Jadhav,
Age 68 years, Occ. Household,
R/o. Bhoras, Tq. Chalisgaon, Dist.
Jalgaon.
- 15) Sau. Sumanbai @ Sushilabai Charansing
Chavan, Age 48 years, Occ. Household,
R/o. Naydongari, Railway Tanda,
Tq. Nandgaon, Dist. Nasik.
- 16) Smt. Lilabai @ Bhilabai Eknath Rathod,
Age 61 years, Occ. Household.
- 17) Shri. Dinkar Eknath Rathod, Age 36
years, Occupation Agriculture.
- 18) Shri. Somnath Eknath Rathod,
Age 34 years. Occup. Agriculture.

No. 16 to 18 R/o. Bodhare (Mothe)
Tq. Chalisgaon, District Jalgaon.
- 19) Akkabai Goban Pawar, Age 38 years,
Occ. Household, R/o. Mundwadi,
Tq. Kannad, Dist. Aurangabad.
- 20) Sau. Sunitabai @ Kalpana Sunil Chavan,
Age 32 years, Occ. Household,
R/o. Lonje, Tq. Chalisgaon, Dist. Jalgaon.

- 21) Shri. Kadu Devidas Rathod, Age 28 years, Occ. Agriculture, R/o. Bodhare (Mothe) Tq. Chalisgaon, District Jalgaon.
- 22) Sau. Kavita Gorakh Chavan, Age 36 years, Occ. Household, R/o. Brahman Shevge, Tq. Chalisgaon, District Jalgaon.
- 23) Shri. Indal Purandas Chavan, Age 50 years, Occ. Agriculture.
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- 25) Shri. Kailash Purandas Chavan, Age 43 years, Occ. Agriculture.
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Nos. 23 to 26 R/o. Belkheda, Tq. Kannad, Dist. Aurangabad.
- 27) Saguna Babu Chavan, Age 43 years, Occ. Household.
- 28) Gurkhi Babu Chavan, Age 41 years, Occupation Household.
- 29) Padma Babu Chavan, Age 36 years, Occupation Household.

Nos. 27 to 29 R/o. Rampurwadi, Tq. Kannad, District Aurangabad.
- 30) Smt. Parvatibai Balu Rathod, Age 75 years, Occ. Household.
- 31) Sau. Amedi Rajaram Chavan, Age 50 years, Occ. Household.
- 32) Shri. Morsing Balu Rathod, Age 75 years, Occ. Agriculture,

Nos. 30 to 32 R/o. At/Post Bodhare (Mothe)
Tq. Chalisgaon, District Jalgaon.

- 33) Sushila Ranchod Pawar, Age 44 years,
Occupation Household, R/o. Shevgaon,
Tq. Parola, District Jalgaon.
- 34) Sau. Kavita Vitthal Chavan, Age 34 years,
Occupation Household, R/o. Umbarkheda,
Tq. Kannad, District Aurangabad.

... Respondents.

...

Advocate for the Petitioner : Mr. S.P. Brahme,
Advocate for the Respondents No. 1 to 4, 5(a) to 5(f), 6 & 7 : Mr. P. S.
Paranjape
Advocate for the Respondents No. 10 to 13 : Mr. G.R. Syed.

WITH

WRIT PETITION NO. 8931 OF 2019

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... Respondents.

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Advocate for the Petitioner : Mr. S.P Brahme,
Advocate for the Respondents No. 1 to 4, 5(a) to 5(f), 6 & 7 : Mr. P. S.
Paranjape
Advocate for the Respondents No. 10 to 13 :Mr. G.R. Syed.

CORAM : **MANGESH S. PATIL, J.**
RESERVED ON : **28/09/2020**
PRONOUNCED ON : **14/10/2020**

JUDGMENT :

Heard both the sides. Rule. The Rule is made returnable forthwith.
With the consent of both the sides the matters are heard finally at the stage
of admission.

2. By way of these petitions under Article 227 of the Constitution of

India, the petitioner who is the original defendant No. 28 in Special Civil Suit No. 150/2017 pending on the file of the learned Civil Judge Senior Division Jalgaon is impugning the concurrent findings of the learned Civil Judge and of the learned Ad-hoc District Judge-1 whereby the applications for temporary injunction filed by the present respondent Nos. 1 to 7 who are the original plaintiffs and application (Exhibit 58) filed by the respondents No. 8 and 9 who are the original defendants No. 19 and 22 have been allowed and the petitioner is temporarily restrained from obstructing possession of the respondents No. 1 to 7 in the suit property which is described in the plaint as a middle 2-Hectares 56-Are portion from the land Gat No. 54 totally admeasuring 7-Hectares 69-Are of village Bodhare (Mothe) Tq. Chalisgaon, District Jalgaon, and that of respondent Nos. 8 and 9 in their joint possession over entire Gat No. 54.

3. In nutshell the averments in the plaint are to the effect that one Vishram Rathod was the common ancestor. He was having five sons namely Mayram, Parshu, Narsing, Harsing and Balu. Vishram died some time between 1945 and 1950. Mayram and Parshu had already separated from the joint family during the life time of Vishram and the other three brothers continued to remain joint. They were having four lands bearing Gat Nos. 161, 262, 256 and 54 at village Bodhare. It is then alleged that the family was joint till the year 1975-1976. Thereafter by virtue of family arrangement Narsing was allotted Gat No. 161, Harsing was given Gat No. 262 and Balu was allotted Gat No. 256. It is specifically averred that Gat No. 54 continued to be a joint family property but still it was trifurcated after demise of Narsing in the year 1977. The Eastern portion was allotted to Balu. Western portion was allotted to Narsing and the middle 1/3rd was allotted to Harsing. Accordingly each of them was put in exclusive possession of their respective 1/3rd portion.

4. It is then averred that plaintiffs are the heirs of Harsing, defendant Nos. 1 to 23 are the heirs of Narsing and defendant Nos. 24 to 27 are the

heirs of Balu.

5. It is averred that in spite of such separate cultivation of their respective portions of Gat No. 54, the defendant nos. 1 to 14 (respondent Nos. 10 to 22 and 34) by three separate sale-deeds dated 22.05.2017, 23.05.2017 and 24.05.2017 sold the entire land Gat No. 54 to the petitioner. It is therefore averred that the sale-deeds are void and not binding on the respondent Nos. 1 to 7 (plaintiffs). They claimed declaration to that effect as well as perpetual injunction to protect their possession in the middle 1/3rd portion of Gat No. 54, which has been called as suit property. They also prayed for temporary injunction by filing application (Exhibit 6) restraining the petitioner from obstructing their possession over the middle 1/3rd portion from Gat No. 54.

6. The petitioner contested the suit denying all the averments except the fact that it has purchased the entire land Gat No. 54 under the three sale-deeds from the defendant Nos. 1 to 14. It asserted that Narsing was exclusive owner in possession of entire land Gat no. 54. His name was appearing in the revenue record for more than 40 years and pursuant to the sale-deeds it was put in possession of the entire land where it has erected a solar panel complex for generating energy. It also contended that it has got the sale-deeds executed after publishing a notice dated 15.09.2016.

7. The defendant Nos. 19 and 22 (respondent Nos. 8 and 9) preferred a counter claim, claiming to be heirs of two daughters of Narsing namely Shantibai and Shevantabai and asserted their right, title and share in the land Gat No. 54 and by separate application (Exhibit 58) prayed for temporary injunction restraining the petitioner from obstructing their joint possession in the land Gat no. 54.

8. After hearing both the sides, by the impugned order the learned Civil Judge allowed both the applications (Exhibit 6 and Exhibit 58) and granted temporary injunctions as prayed for by the plaintiffs and defendants

No. 19 and 22.

9. Being aggrieved and dissatisfied by such order, the petitioner preferred Misc. Civil Appeal Nos. 18/2018 and 19/2018 and by the impugned orders the learned Ad-hoc District Judge-1 dismissed both the appeals. Hence these petitions.

10. Learned advocate Mr. Brahme for the petitioner vehemently submitted that it is a matter of record that the name of Narsing was recorded in the ownership and possession column of the entire land Gat No. 54 for decades. Though the revenue record does not create a title, such long standing revenue record does carry a presumptive value. He would submit that in the facts and circumstances and the averments in the plaint it is improbable that the three branches of Narsing, Harsing and Balu only partially partitioned the properties. He would submit that in fact there is no record of any kind to *prima facie* show that at any point of time the land Gat No. 54 ever stood in the name of common ancestor Vishram and by some mutation it was subsequently recorded in the revenue record in the name of Narsing. He would therefore submit that the two Courts below have lightly brushed aside this strong circumstance of existence of long standing revenue record in the name of Narsing.

11. The learned advocate would submit that the reference in the revenue record against the name of Narsing as the 'Karta' of the joint family has been misread by the two Courts below as 'Karta' of the larger joint family comprising of the three branches of Narsing, Harsing and Balu. They ought to have read it to mean that Narsing was the Karta of his own family, comprising of he himself, his sons and daughters. The two Courts below have committed a gross error in appreciating this very clinching circumstance of there being long standing revenue entries standing in the name of Narsing.

12. He would then submit that the solar panels erected by the

petitioner are actually stand erected over the land Gat No. 54 and as it generates energy, no temporary injunction could have been granted against it as laid down in the case of **Mahadeo Savlaram Shelke Vs. Pune Municipal Corporation (1995) 3 Supreme Court Cases 33** and catena of other cases. He would then submit that heavy and irreparable loss would be caused to the petitioner if its project is stalled. The learned advocate therefore would submit that the observations and conclusions of the two Courts below are perverse, arbitrary and illegal.

13. Lastly learned advocate Mr. Brahme would point out that during pendency of the Misc. Civil Appeals before the District Court, the original defendant Nos. 19 and 22 (respondent Nos. 8 and 9) entered into a compromise with the petitioner and had filed an affidavit (Exhibit 9) in Misc. Civil Appeal No. 18/2018 relinquishing their right, title and interest in the land Gat No. 54. Therefore the learned Ad-hoc District Judge atleast ought to have allowed the Misc. Civil Appeal No. 18/2018 as it was challenging the order of temporary injunction passed on the application (Exhibit 58) filed by these two persons.

14. Learned advocate Mr. Paranjape for the respondents No. 1 to 7 i.e. the plaintiffs submitted that mere long standing revenue entries without any basis or source of acquisition of right and title is of no consequence. There is nothing to show that Narsing had exclusively acquired land Gat No. 54 so that his heirs could have sold it to the petitioner. The two Courts below have taken a plausible view. The observations and conclusions drawn by them are neither perverse or arbitrary and therefore this Court should be loath in causing interference.

15. One need not delve much as far as the legal position is concerned particularly the scope of the powers vested in this Court under Article 227 of the Constitution of India particularly in respect of the concurrent findings of the two Courts below. Obviously, the scope is very limited and this Court

can intervene only as culled out in case of **Shalini Shyam Shetty and another Vs. Rajendra Shankar Patil (2010) 8 Supreme Court Cases 329.** Bearing in mind these limitations on the powers of this Court, if one adverts to the fact situation in the matter in hand and the observations and conclusions of the two Courts below, I am afraid, it is indeed impossible for this Court to step in and cause any interference.

16. At the out set it is necessary to note that it is only the defendants No. 1 to 14 who executed the sale-deeds of different portions of land Gat No. 54 in favour of the petitioners. Admittedly, apart from the defendant Nos. 1 to 14, even the defendant Nos. 15 to 23 are the heirs of Narsing. Admittedly, Narsing was also survived by daughters Shantibai and Shevantabai. Defendant Nos. 15 to 18 are the heirs of Shantibai whereas defendant Nos. 19 to 23 are the heirs of Shevantabai. Assuming for the sake of arguments that Narsing was the exclusive owner of the land Gat No. 54, the defendant Nos. 1 to 14 alone could not have sold it to the petitioner ignoring the right, title and share of the heirs of Shantibai and Shevantabai. This conduct of the defendant Nos. 1 to 14 and the petitioner in getting the sale-deeds executed to the detriment of heirs of Shantibai and Shevantabai itself creates doubt about the *bona fides* of the petitioner.

17. In this context it is necessary to note that during pendency of the appeal, the petitioner could manage to bring defendants No. 19 and 22 to table and entered into some sort of settlement whereby they have relinquished their right and share in that land in favour of the petitioner. Taking advantage of this circumstance it is attempted by the petitioner to argue that at least because of such compromise the application (Exhibit 58) ought to have been rejected by allowing the Misc. Civil Appeal No. 18/2018. Indeed, by virtue of such compromise, the application (Exhibit 58) preferred by the original defendants No. 19 and 22 ought to have been allowed by the learned Ad-hoc District Judge.

18. But then this circumstance also demonstrates as to how the petitioner in an high handed manner is trying to assert its possession over the entire land Gat No. 54.

19. Obviously, it is a matter of trial and would be decided at an appropriate time as to if the land Gat No. 54 was a joint family property and if the heirs of Harsing and Balu can be said to have a share therein. I do not intend to scan the material when the two Courts below have indulged in such act and have come with a plausible reasoning. Some error here and there in appreciating the facts and circumstances would not enable this Court to cause interference with a limited power and jurisdiction under Article 227.

20. It is trite that in case of public projects and infrastructural projects, the Courts should be circumspect in clamping injunctions, as has been laid down in case of **Mahadeo Savlaram Shelke (supra)**. But then, though the petitioner is an energy harvesting Company, that by itself *ipso facto* would not make its project a public project or infrastructural project as is contemplated in case of **Mahadeo Savlaram Shelke (supra)**. It is a Private Limited Company and the projects undertaken by it can only be for its business purposes. It cannot be compared with the public projects being undertaken by the State agencies. Therefore such a distinction which is clear and apparent needs to be borne in mind while applying the principles of **Mahadeo Savlaram Shelke (supra)** to the facts situation of the matte in hand.

21. Strenuous attempts were made by the learned advocate for the petitioner to demonstrate as to how already solar panels have been erected pursuant to the sale-deeds executed in favour of the petitioner over the entire land Gat No. 54. My attention was also adverted to the photographs produced on record to substantiate that.

22. It does appear from the photographs that solar panels stand

erected around which a wire fencing is also erected. However, simply on the basis of such photographs one cannot make out if and where these panels stand erected. It being a pure question of fact, in my view no importance can be attached to this piece of evidence at this juncture. The petitioner would get an opportunity to demonstrate before the Trial Court by leading cogent evidence as to how it is in exclusive possession of some portion of land Gat No. 54.

23. Taking into account all the aforementioned facts and circumstances, the Writ Petition No. 8910/2019 is liable to be dismissed, whereas Writ Petition No. 8931/2019 will have to be allowed.

24. The Writ Petition No. 8910/2019 is dismissed. Rule is discharged.

25. The Writ Petition No. 8931/2019 is allowed. The impugned order passed on the application (Exhibit 58) by the learned Civil Judge Senior Division and impugned judgment and order passed by the learned Ad-hoc District Judge-1 in Misc. Civil Appeal No. 18/2018 are quashed and set aside and the application (Exhibit 58) is rejected. The Rule is accordingly made absolute in above terms.

(MANGESH S. PATIL, J.)

26. After pronouncement of the judgment, Mr. S.P. Bramhe, learned Advocate for the petitioner submits that the order to the extent of dismissal of Writ Petition No. 8910/2019 may be stayed for a period of four weeks to enable the petitioner to approach the Supreme Court. He submits that the interim relief granted by this Court by order dated 23.07.2019 was already in operation in its favour till date.

27. Mr. P.S. Paranjape, learned Advocate for the respondent Nos. 1 to

4, 5(a) to 5(f), 6 and 7, opposes the request.

28. Taking into account the fact that the interim relief is in operation till date, in order to extend an opportunity to the petitioner to approach the Supreme Court, the operation of the order to the extent of dismissal of Writ Petition No. 8910/2019 shall stand stayed for a period of four weeks.

(MANGESH S. PATIL, J.)

mkd