

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 15543 OF 2019

Hirabai Madhukar Karanje,
Age : 75 years, Occu. Household,
R/o Ambapur Road, Sakri,
Tq. Sakri, District Dhule

PETITIONER
(Orig. Plaintiff)

VERSUS

1. The Nagar Panchayat,
Sakri, Taluka Sakri,
District Dhule
2. The Chief Executive Officer,
Nagar Panchayat, Sakri,
Taluka Sakri, District Dhule

RESPONDENTS
(Orig. Defendants)

Mr. Amol S. Sawant, Advocate for the petitioner
Mr. D.S. Bagul, Advocate for the respondents

CORAM : MANGESH S. PATIL, J.

JUDGMENT RESERVED ON : 16.10.2020
JUDGMENT PRONOUNCED ON : 21.10.2020

JUDGMENT :

Heard.

2. Rule. The Rule is made returnable forthwith. Learned Advocate Mr. D.S. Bagul waives service for both the respondents. At the request of the learned Advocates for the parties, the matter is heard finally at the stage of admission.

3. In this Petition under Articles 226 and 227 of the Constitution of India, the petitioner, who is the original plaintiff in a suit before the Civil Judge, Junior Division, Sakri, is impugning the concurrent findings and orders of the two courts below refusing to grant her temporary injunction against the respondents/defendants.

4. The facts leading to the filing of the Writ Petition may be summarized as follows :-

A. The petitioner claims to have purchased the property being plot No.10 from the layout of land Gut No.167 (part) of village Sakri under a registered sale-deed dated 16.02.1979. Since thereafter she has been in exclusive possession of the plot, which is bound by Dhule-Sakri-Surat National Highway No.6 to the South and Sakri-Ambapur road to the East and the plots from the same layout to the remaining two sides. She claims that since the date of purchase, she has secured the plot with wire fencing and has used it by constructing house, planting trees and erecting sheds. The road Sakri-Ambapur to the east has been 40 feet in width since the date she purchased the plot. She then avers that the nephew of her predecessor, hand-in-glove with the officers of the respondent – Municipal Council, started asserting that the location of Sakri-Ambapur road is shifted from the original place and now passes through his plot Nos.27 and 28 from the same layout, which are to the east of that road. She then avers that the respondent

– Municipal Council through its officers applied for measurement of the land Gut No.123/2/B and particularly all roads coming under that land. Accordingly, the Deputy Superintendent of Land Records, Sakri served her a notice about such measurement which was subsequently postponed but later on was undertaken behind her back. The respondents then served a notice on 24.07.2019 to a couple of persons, who are, in fact, her tenants, namely Santosh Anna and Sandip Ramesh Wagh, calling upon them to remove the sheds erected by them by making encroachment over a portion of the road. She thereafter applied for carrying out measurement by a superior officer (Nimtana) and even while her request was being considered, the respondents have threatened to remove the sheds occupied by her tenants. Hence she prays for declaration about her possession and perpetual injunction restraining the respondents from disturbing her possession over plot No.10. By way of application (Exhibit-5), she prayed for temporary injunction in terms of the latter prayer.

B. The respondents contest the suit and the application for temporary injunction (Exhibit-5), by filing written statement-cum-say. They do not dispute her title and possession over plot No.10, but dispute that the tin sheds erected by the two persons are the part and parcel of her plot. They also admit about having served the notices and having made an attempt to demolish those sheds and take the portion of the land underneath in their possession. They further contend that the entire land Gut No.167, was

subsequently converted to Gut No.123, which was further sub-divided as Gut Nos.123/2 and 123/2/B. A layout of land Gut No.167 was prepared by the Town Planner, Jalgaon. The Sakri-Ambapur road as is approved then passes along the east of the petitioner's plot No.10 and to the east of that road lie plot Nos.27 and 28. They further contend that since the petitioner made encroachment over the eastern side portion beyond her plot No.10, through which the road ought to have passed, it got shifted to further east. They further contend that in the year 2018, when an attempt was made to develop the Sakri-Ambapur road by the Zilla Parishad, it transpired that one Balu Gambhir Chaudhary created obstruction. Therefore, keeping the work over the disputed area aside, the rest of the work was completed. It is because of the obstruction created by sheds that the development work has halted at that spot. That is why notices were issued to Santosh Anna and Sandip Ramesh Wagh, which was replied by only Santosh Anna. However, neither of them has been joined as a party to the suit. They further deny about any measurement having been carried out behind the back of the petitioner and prayed to reject the application for temporary injunction.

C. After hearing both the sides, the learned Civil Judge, by the impugned order, rejected the application for temporary injunction. The petitioner challenged that order by preferring Misc. Civil Appeal under Section 104 of the Code of Civil Procedure before the District Court. By the impugned judgment and order, even the appeal has been dismissed. Hence

this Writ Petition.

5. Mr. Amol S. Sawant, learned Advocate for the petitioner vehemently submits that there is no dispute about the petitioner being the owner of plot No.10 and even her exclusive possession over it. The question as to if she has made any encroachment over any portion of the road is purely a disputed question of fact, which ultimately could be decided after a full-fledged trial. Merely because at the request of the respondents, some measurement has been carried out, one cannot jump to the conclusion based on such measurement about she having committed any encroachment. He would submit that since such measurement by the office of the Cadestral Surveyor has been carried out for a specific purpose, by virtue of Section 83 of the Indian Evidence Act, there is no presumption available to be drawn unless the Surveyor, who has carried out the measurement, steps into the witness box and proves the result of the measurement carried out by him. He would cite the following decisions of this Court in support of his submissions :-

- (i) ***Ramchandra s/o Bhikaji Jagtap Vs. Dudharam Langruji Padvekar dead through L.Rs. Bulkabai Padvekar and others;***
2004 (1) Mh.L.J. 278
- (ii) ***Kishan Ramchandra Kumbhar and others Vs. Kashinath Bandu Teli and others ;***
2004(1) Mh.L.J. 285
- (iii) ***Sukhdeo Paraasharamji Bhugul (Dr.) Vs. Wamanrao Nagorao Charhat;***

2004(3) Mh.L.J. 724

- (iv) *Jayhind Vithoba Mahadik Vs. General Manager,
Maharashtra Scooters Ltd.;*
2004(3) Mh.L.J. 733
- (v) *Prakash s/o Harising Bhadoriya and another Vs.
Dada s/o Jago Chahande;*
2004(4) Mh.L.J. 558
- (vi) *Kashinath Chindhuji Shastri Vs. Haribhau Nathuji Bawanthade;*
2004(2) Mh.L.J. 722

6. Learned Advocate Mr. Sawant then submits that the petitioner has produced a certified copy of the map prepared at the time of obtaining Non-Agricultural use permission by the original owner (Exhibit-H), which is dated 17.10.1975 showing that one road originates from Sakri-Dhule road along the east of the land Gut No.167 (part). He would point out that to the east of that road, a 'Nalapad' (stream) is shown. He, therefore, submits that if the property to the east of this road Sakri-Ambapur was a 'Nalapad' in the year 1975, there was no question of existence of plot Nos.27 and 28 said to be belonging to the nephew of the predecessor of the petitioner namely Balu Gambhir Chaudhary. The learned Advocate would then point out that the proposed layout of land Gut No.167 (Exh-B) shows that existing road originating from southern side Sakri-Dhule road is shown to be in existence to the east of the petitioner's plot No.10 and it is beyond that, to the further east plot Nos.27 and 28 have been shown. The learned Advocate, therefore, submits that inspite of such clear documents demonstrating her ownership and exclusive possession over her property bearing plot No.10, the

respondents, in highhanded manner and at the behest of Balu Gambhir Chaudhary, are threatening her peaceful possession.

7. Learned Advocate Mr. Sawant would then point out that the photographs were also produced before the two courts below, some of which are annexed to the petition (Exh-U), which clearly show, in photograph Nos.1 and 2, existence of the disputed tin sheds and the bungalow of the petitioner and the photograph is taken from the south. By adverting my attention to the remaining three photographs, he would submit that to the east of Sakri-Ambapur road, said Balu Gambhir Chaudhary has erected five sheds and has been running a beer shop with necessary permission from the concerned office. The learned Advocate would submit that if really the plots belonging to Balu Gambhir Chaudhary bearing Plot Nos.27 and 28 were completely covered by Sakri-Ambapur road, as is being demonstrated by referring to the measurements carried out by the Surveyors, he would not have been able to erect these five shops. He would, therefore, submit that without any rhyme or reason, the existing Sakri-Ambapur road is being sought to be shifted by encroaching her property.

8. Lastly, learned Advocate Mr. Sawant would submit that in fact, Sakri-Ambapur road vests in Zilla Parishad, Dhule and the respondents have no concern and cannot take any initiative by invoking the provisions of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 ("MMC Act", for short) and the Maharashtra Regional Town

Planning Act, 1966 (for short, “MRTP Act”). He would then submit that both the courts below have grossly erred in overlooking the factual scenario appearing from the record and also failed to consider the fact that if the respondents are allowed to go ahead with their plan, the petitioner would be put to irreparable loss and inconvenience.

9. Mr. D.S. Bagul, learned Advocate for the respondents would initially point out that though originally, Sakri was a Village Panchayat, it was subsequently notified as a Municipal Council by virtue of a notification dated 23.02.2015, issued under Section 341C of the MMC Act. He would then submit that simultaneously by virtue of another notification of the even date, it was specifically declared that the whole area of Village Panchayat of Sakri as transitional area. He would then submit that though Sakri-Ambapur road originally vested in Zilla Parishad, since it subsequently stands included in the local area of Sakri Municipal Council duly constituted, the petitioner is not entitled to derive any benefit.

10. Learned Advocate Mr. Bagul then submits that obviously, the measurements carried out at the behest of a party, will have to be duly proved by leading necessary evidence as is contemplated under Section 83. However, when the respondent, as a local Authority, has ascertained the fact of the encroachment, it is entitled to execute the statutory provisions available to them for development of the local area. He would then points out that the persons to whom notices were served by the respondents, who,

according to the petitioner, are her tenants, being the aggrieved parties, are not coming with any objection. Though the petitioner claims those two persons to be tenants, there is no record to show that the sheds were ever erected by her much less with necessary permission from the local authority. He would further point out that except her bald statement, there is absolutely no material to substantiate her version that the said two persons are her tenants. All these facts have been taken into consideration by the two courts below and the decisions arrived at by them cannot be interfered with while exercising the writ jurisdiction.

11. I have carefully gone through the papers. Obviously, the dispute is more of facts than law. There is no dispute about the petitioner being the owner in exclusive possession of her plot No.10. The dispute is as to the area or portion under her possession. Though she claims that her property includes the disputed sheds, none of the measurement maps produced on the record demonstrates exact location of these disputed sheds.

12. It is pertinent to note that the respondents have served notices to Santosh Anna and Sandip Ramesh Wagh calling upon them to remove their sheds. One of them i.e. Santosh Anna seems to have filed an affidavit admitting to be a tenant of the petitioner in the shed. Apart from the fact that they are not the parties to the suit, there is also no material to show that these tin sheds were ever erected by the petitioner. As has been rightly submitted by learned Advocate Mr. Bagul for the respondents, if at all she

had erected the sheds, it was expected that she would have come with some tangible proof about such erection at her expense and with necessary permission from the local Authority. Nothing of the sort is produced and available to be seen.

13. Since the petitioner has filed the suit with a specific averment that these two sheds are part and parcel of her property plot No.10, in fact, it was expected of her to have done some homework and ascertained with some objective material like, may be a private measurement showing the location of the disputed tin-sheds with reference to her plot. No such attempt having been made, except her bald statement, there is no material to even prima facie show that these two sheds are the part and parcel of her plot No.10.

14. In this respect, without intending to draw any inference on facts independently, I feel it necessary to emphasis a fact, which apparently seems to have been missed by the two courts below. The petitioner, in her plaint, at more than one places, specifically avers about she having erected a wire fencing around her plot No.10. However, the photographs produced by her even in this petition do not show any such wire fencing in existence covering even the area occupied by two disputed tin-sheds. On the contrary, there appears to be such a wire fencing at the spot intervening her bungalow which is to the west of these disputed sheds. No plausible explanation is coming forth as to why such wire fencing cannot be seen elsewhere in these

photographs. This, in my considered view, is a vital circumstance, which, at present, weighs against her case.

15. Since the petitioner has been seeking an equitable relief in the form of injunction, if it is her case that under the garb of undertaking some public work, her exclusive and peaceful possession over her property is being threatened, she ought to have come with a specific dimension, particularly the length of the southern side boundary, when, according to her, she has already erected a bungalow over the plot, which is apparently having wire fencing to the east. That could have helped in ascertaining if really her bungalow is standing exactly over a portion purchased by her. There being no such averment or material, one cannot infer that her possession over plot No.10 purchased by her is under any threat.

16. Since this Court is called upon to exercise a writ jurisdiction, it is trite that the scope of the enquiry at hand is very limited, more so since the two courts below have concurrently found the petitioner to be not entitled to the equitable relief. The observations made and the conclusions drawn by them being plausible, cannot be interfered with.

17. As far as vesting of Sakri-Ambapur road is concerned, at this juncture, there is enough material in the form of Government notifications showing that Sakri was earlier a Village Panchayat, which subsequently was established as a local area under the MMC Act and therefore, there is no

apparent illegality in respondents initiating the action under the provisions of the MMC Act and the MRTP Act.

18. Perhaps, comprehending such result, Mr. Sawant, learned Advocate for the petitioner, by referring to the above decisions of this Court, submits that the dispute would come to an end if the entire land is measured and not only such measurement is undertaken but even a direction is given to the Surveyor to demonstrate all the standing structures over the entire land Gut No.167.

19. Needless to state that it is for the petitioner to explore and for the Trial Court to decide as to in what manner, the suit can be decided effectively. This Court need not travel in that area. The petitioner may make such a request before the learned Civil Judge.

20. In the result, the Writ Petition fails.

21. The Writ Petition is dismissed. The Rule is discharged.

[MANGESH S. PATIL]
JUDGE