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

CIVIL APPLICATION NO.7004 OF 2021
AND
CIVIL APPLICATION NO.7005 OF 2021
IN
FIRST APPEAL NO.3492 OF 2019

Gopal S/o Harikishan Zanwar
and anr.

..APPLICANTS

VERSUS

Kadar Khan S/o Mohammad Khan Pathan,
Since deceased, through his Legal Heirs
and ors.

..RESPONDENTS

Mr. V.J. Dixit, Senior Advocate, instructed by Mr. S.S. Rathi, Advocate for applicants;
Mr. R.S. Deshmukh, Senior Advocate, instructed by Mr. Shriram V. Deshmukh and Mr Devang R. Deshmukh, Advocates for respondents

**CORAM : RAVINDRA V. GHUGE
AND
S. G. MEHARE, JJ.**

**(Date of reserving the order : 11.10.2021
Date of pronouncing the order :28.10.2021)**

ORDER (Per S.G. Mehare, J.)

1. Both these Civil Applications have been filed by original respondents no.1 and 2 in the First Appeal. The suit for specific performance of contract was decreed in favour of the present applicants by the learned Civil Judge Senior Division, Latur. The respondents/appellants have preferred the appeal against the said judgment and decree. The Honourable Division Bench of this Court in Civil Application No.13090 of 2019, passed the order which reads thus:-

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“There shall be interim relief in terms of prayer clause (B) during pendency of the appeal. The parties shall not create any third party interest over the suit property and shall not change the nature of the property.”

2. In spite of having knowledge of this order, it is alleged that the respondents-appellants are making every attempt to create third party interest as well as erecting a structure and digging a bore-well in the suit property and thereby changing the nature of the suit property. The appellants are disobeying the prohibitory orders issued by this Court and acting illegally. It is prayed to dismiss the appeal or in the alternative, vacate the order passed in Civil Application No.13090 of 2019.

3. With the same facts in an another Civil Application No.7005 of 2021, the appellants prayed to issue the direction to the respondents prohibiting them from changing further nature of the suit property and the structure erected on the suit land be ordered to be demolished. To bolster the contentions, the photographs have been placed on record.

4. Respondents no.1 to 7 have filed their affidavit-in-reply. Their contention is that the shed for storage of agricultural produce, cattle shed and water fit for human and cattle consumption are integral parts of agricultural activities. There was a temporary tin shed and tree woods shed standing on the suit property for storing agricultural produce and for labourers to rest. It was temporarily erected 20 years back. It was in extremely dilapidated condition. The agricultural produce was being

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damaged, causing huge loss to the respondents. The dilapidated shed was beyond repairs and as such, the respondents erected tin shed for storage of agricultural produce a resting place for the labourers. So also, the respondents were required to repair the cattle shed which was already existing in the suit land. There was no electrification within 500 to 700 Mtrs. from where the bore-well has been dug by the respondents. They felt it reasonable and economical to get electrification through solar system. Therefore, they installed a solar system. All these acts are ancillary to agricultural activities. They have not done any act intentionally or *mala fide* to violate any order of this Court.

5. In sum and substance, they would submit that the tin sheds have been erected to protect the agricultural produce and for rest of the labours and for improvement of the agricultural operations they have dug the bore-well and installed the solar system. The activities being ancillary to the agricultural activities do not change the nature of the suit property. It does not amount to change in the nature of the suit property.

6. Heard the learned Senior Counsel Shri Dixit for the applicants and the learned Senior Counsel Shri Deshmukh for the respondents at length.

7. Learned Senior Counsel for the applicants would submit that the activities of the respondents are apparently going to change the nature of the suit property. Erection of the tin shed at new place is also changing the nature of the suit property. There was no bore-well or the solar plant but the respondents intend to change the nature of the property and may bring

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hurdle in the execution of the decree. The amount as directed by the Court of first instance has been deposited there at Latur, which may be directed to be invested in the fixed deposit. Referring to the photographs he would argue that *prima facie* erecting a structure is a permanent structure.

8. It is admitted by the respondents that some tin sheds have been erected but those are erected as the old tin sheds were in dilapidated condition. The activities which they are going to do are absolutely not changing the nature of the suit land. The suit land was used for agriculture purpose and is still used for the same purpose. So far as the apprehension in the mind of the applicants that there shall be an obstruction in the execution of the decree due to the activities done by the respondents, is without foundation. All structures are temporary. On the same line, he has argued that in order to attract the action under Order XXXIX Rule 2A of the Code of Civil Procedure, the prohibitory order shall be served on the party against whom the action is claimed or proposed. There are no grounds either to dismiss the appeal or to vacate the stay. There are also no circumstances to direct the respondents to remove the tin sheds.

9. The contention of the learned Senior Counsel Shri Deshmukh that to initiate action for breach of prohibitory order, the service of the order is mandatory, may be correct in case the Court passes an *ex parte* order without notice. Herein a case, this Court has passed the prohibitory order when the respondents sought a 'stay' to the execution of the decree. In such situation, it is difficult to accept that the respondents had no

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knowledge of the prohibitory order passed by this Court. The photographs at page nos.10, 11 and 12 clearly show that there was an old tin shed and one hut in the field. The photographs clearly prove that the old structure is kept as it is and instead of repairing it, two new sheds have been erected at another place. No doubt, the sheds are required for storing the agricultural produce. Looking at the photographs, now shed does not seem fit to be used to store the agricultural produce. The solar structure has the cement foundation and bore-well is also seen dugged. All these activities have been admittedly done by the respondents. The activities done with knowledge are definitely deliberate.

10. Hence, we do not find substance in the submission that the sheds are raised without intention and knowledge. *Prima facie*, we feel that the tin sheds have been erected embedding poles in the land, hence it is a permanent structure. In fact, since the respondents were having knowledge of the prohibitory order passed by this Court while granting the interim relief, they ought to have sought the permission of this Court before carrying out any activity.

11. There is *prima facie* case to believe that the activities of the respondents are intentional and deliberate. If they would have repaired the old structure then the case would have been different. So far as the agricultural activities are concerned, it is the right of possessor to cultivate the land. Digging a bore-well is also an unauthorized activity committed by the respondents, but may not change the nature of suit property and cause serious prejudice to the appellants.

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12. In the light of the above, we believe that the activities of the respondents, as mentioned above, are deliberate and intentional and in breach of the prohibitory orders issued by this Court. However, we are of the opinion that vacating the stay would serve no purpose. The tin sheds erected unauthorizedly may be directed to be removed.

13. Hence, we pass the following order:-

ORDER

- 1) Civil Application No.7004 of 2021 is dismissed.
- 2) Civil Application No.7005 of 2021 is partly allowed.
- 3) The respondents are directed to remove the tin sheds as shown in photographs at page nos.10 to 12 of the paper-book, within fifteen days from today.
- 4) The respondents are further directed not to commit any activity in the suit land in breach of the interim protection granted by this Court on conditions, henceforth.
- 5) The Civil Judge Senior Division, Latur is directed to invest the amount deposited by present applicants in fixed deposit as per the provisions of the Civil Manual.

(S. G. MEHARE, J.)

(RAVINDRA V. GHUGE, J.)

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