

IN THE HIGH COURT OF BOMBAY AT GOA

WP No. 132 of 2021

SHREE DEVI BHAGWATI
DEVASTHAN, THR. ITS
ATTORNEY, VILAS
RAGHOBA PADIYAR DESAI

... PETITIONER

VS

SHUBHANGI SHAM
PARSEKAR AND 5 ORS

.... RESPONDENTS

Mr. S. Usgaonkar, Advocate for the Petitioner.
Mr. B. Thali, Advocate for the Respondent nos.1 to 4.
Mr. Shivan Desai, Advocate for the Respondent no.5.

CORAM: DAMA SESHADRI NAIDU, J.
Date: 9th March 2021

Order:

The petitioner is the Devasthan. It is one of the defendants in Regular Civil Suit No.25/2020 before the Court of Civil Judge, Junior Division, at Pernem. The respondent nos.1 to 4, as the plaintiffs, filed that suit contending that the petitioner-Devasthan had encroached on their property and was carrying out certain civil works, to their prejudice. Besides that, they have also pleaded that they enjoy a right to motorable access through the Devasthan's property to reach their property. But that has been blocked. In that suit, they have also applied for an interim injunction. On contest, the trial Court allowed that application, through a 50-page judgment, dated 7/7/2020.

2. Aggrieved, the Devasthan has filed Miscellaneous Civil Appeal No.37 of 2020. In that appeal, Devasthan filed an application seeking the Appellant Court's leave for the following relief:

“ During the pendency and disposal of the appeal this Hon'ble Court may pleased to permit Respondent no.5 (GTDC) to cut the marble/granite slabs stacked in the SAID PROPERTY and move/shift the same along with the marble/granite cutting machine and more particularly grant the request made by the Respondent no.5 (GTDC) vide its notice dated 31/8/2020 at Exb.II above.”

3. But the appellate Court dismissed that application, through an order dated 18/1/2021. It has in fact held the Devasthan ought to have filed the application before the Civil Judge Junior Division, Pernem, for modifying the Order if it wanted to remove the marble from the disputed property. It has held that the request must have come from GTDC, which, too, is a party to the suit as the second defendant. That request could have been either to the trial Court or to the Appellate Court. So the Appellate Court has held that the application at the Devasthan's behest was not maintainable. So, the Devasthan is before this Court.

4. Heard Shri S. Usgonkar, the learned counsel for the petitioner. Shri B. Thali, the learned counsel for respondent nos.1 to 4, and Shri S. Desai, the learned counsel for the respondent no.5.

5. Though, the learned counsel for the respective parties have advanced elaborate arguments, I reckon it may not be necessary for me to extract those arguments. It would suffice to say that pending the adjudication of the Misc. Civil Appeal, the petitioner wanted to take out the

machinery and the materiel stacked on the disputed property. The appellate Court has found that the civil works were being carried out by GTDC and that both the material and the machinery belonged to it. Therefore, GTDC alone must have filed the application either before the trial Court or before the Appellate Court.

6. To support its conclusion, the Appellate Court has also pointed out that it is the GTDC that issued the notice to the respondents no.1 to 4 for having the material and machinery removed. Thus, the Appellate Court seems to have concluded that the application on the Devasthan's behalf is not maintainable.

7. Indeed, the Devasthan wanted to cut the marble and granite slabs before it could transported them from the disputed site. And this relief for extended occupation of the property must have rankled the respondents. It is so because the respondents secured an interim injunction from the trial Court not only preventing the Devasthan and others from carrying out any developments but also from interfering with the respondents' possession.

8. The petitioner's counsel now, however, concedes that even if the Court allows the Devasthan or the fifth respondent to take away the material as it is, besides the machinery, that will suffice. According to him, even, the respondents in their reply conceded to that extent.

9. Pat came the rebuttal from the respondents' counsel. According to him, the respondents never conceded; they only stressed that the petitioner's

prayer is not *bona fide*. Had it been so, they would have asked for immediate clearing of the site and the respondents would have considered that request.

10. Be that as it may, now, the respondents have no substantial objection if the disputed property is cleared of the stored material and the machinery. But they only want that to happen without prejudice to their rights and contentions either before the trial Court or before the Appellate Court.

11. Under these circumstances, I dispose of this Writ Petition holding that the Devasthan or GIDC will clear the disputed property of the stored material and machinery within ten days from 11/3/2021 (the time the petitioner actually wanted before me).

As a matter of abundant caution, I clarify that this interim arrangement pending the suit and the miscellaneous appeal is without prejudice to the rights and contentions of all the parties to the litigation.

Authenticated copy of this order be issued to the parties.

DAMA SESHADRI NAIDU, J.

AP/-