

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 1143/2021

1. Sanjay Laxmanrao Gawande,
aged 50 years, Occ. Cultivator.
2. Vaishnavi Sanjay Gawande,
aged 22 years, Occ. Education.
3. Om Sanjay Gawande,
aged 19 years, Occ. Education

All r/o Ambika Nagar, Akot,
Tq. Akot, Dist. Akola.

.....PETITIONERS

...V E R S U S...

1. Sau. Pushpa Dadarao Pundekar,
aged 54 years, occ. Household
& Agriculturist, through power of
attorney holder Romil s/o Dadarao
Pundekar, aged 32 years, Occ.
Business, r/o Behind Pushpanjali
Mangal Karyalaya, Akola Road,
Akot, Tq. Akot, Dist. Akola.
2. State of Maharashtra, through
Collector, Akola, Dist. Akola.
3. Taluka Inspector of Land Records,
Office of T.I.L.R. Akot, Tq. Akot,
Dist. Akola.
4. Municipal Council, Akot,
through Chief Officer, Akot,
Dist. Akola

...RESPONDENTS

Mr. R. L. Khapre, Senior Advocate Assisted by Mr. D. R.
Khapre, Advocate for petitioners.

Mr. A. M. Ghare, Advocate for respondent no.1.

Mr. A. J. Kadukar, A.G.P. for respondent nos. 2 and 3.

CORAM:- V. M. DESHPANDE, J.
DATED :- 01.03.2021

ORAL JUDGMENT

1. Rule. Rule is made returnable forthwith. Heard finally by consent of learned counsel for the parties.

2. This writ petition is by original defendant nos. 1 to 3. Respondent no.1 herein is original plaintiff whereas respondent nos. 2 to 4 are original defendant nos. 4 to 6. Heard Mr. R. L. Khapre, learned Senior Counsel for petitioners, Mr. A. M. Ghare, learned counsel for respondent no.1 and Mr. Kadukar, learned A.G.P. for respondent nos. 2 and 3. At this stage, presence of respondent no.4-Municipal Council is not essential.

3. The suit is filed for following reliefs:

(a) For declaration that the 15 meters D.P. Road is as a layout road at the time of conversion of field Survey No. 651 as well as at the time of conversion of the layout of field Survey No.651/2-A and to declare that measurement sheet dated 01.06.2017 is illegal and invalid.

(b) For permanent mandatory injunction be granted directing the Defendants to remove the obstruction by erecting the wall on 15 meters D.P./Layout road just opposite the Mangal Karyalaya thereby completely blocked the access which is shown in the map in red colour by letters E and F, so also direction be issued to remove the fencing of barbed wire erected on the said 15 meters wide D.P/Layout road, which is shown in the suit map by letters G and H and the said access be made clear by further directing the Defendants not to create any obstructions on this 15 meters road either by himself or through his associates, agents, employees or others."

Along with the plaint, plaint map is also filed which is available on record at page no. 40 of compilation of the writ petition.

4. Along with plaint, the plaintiff filed an application under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure for temporary mandatory injunction seeking direction against the petitioners that they shall remove the obstructions, which they have made just opposite to the *Mangal Karyalaya* of the original plaintiff.

5. The suit is a contested one. The petitioners filed their written statements and also filed counter claim. Not only that, they also filed an application for injunction (Exh.-50). The learned Civil Judge Senior Division, Akot on 22.12.2020 allowed the injunction application filed by respondent no.1-original plaintiff. Clause (2) of the said order reads thus:

“The defendant Nos.1 to 3 are hereby directed to remove the construction of wall on 15 Meter D.P. road which is opposite the Mangal Karyalaya of the plaintiff as shown in the map annexed with plaint in red colour by letters ‘E’ and ‘F’. So also directed to remove the fencing of barbed wire erected on the said 15 meter D.P. road as shown in the plaint map by letters ‘G’ and ‘H’, within 15 days from the date of order.”

On 02.01.2021, the learned Judge rejected the application Ehx.-50 for grant of ad interim mandatory injunction filed on behalf of the petitioners.

6. The petitioners filed two different Miscellaneous Civil Appeals against these two separate orders passed by the learned Judge of the trial Court against them. The learned District Judge-I, Akot vide judgment dated

17.02.2021 dismissed both the appeals filed on behalf of the petitioners.

The petitioners thereafter filed an application before the appellate Court (Exh.-21) for stay. The learned Judge of the appellate Court vide order dated 20.02.2021 stayed the order till today.

7. The learned counsel for respondent no.1-original plaintiff invited my attention to averments in paragraph 16 of the petition, which are reproduced as under:

“16.Still in view of preparedness of the petitioners to remove 9 meters wide compound wall and fencing from the alleged road, the respondent no.1 is not going to suffer any inconvenience and the remaining construction of the petitioners would remain intact...”

8. The learned Senior Counsel Mr. Khapre, on instructions from the petitioners, makes a solemn statement before this Court for and on behalf of the petitioners that petitioners will remove the obstructions from the points G to H and point E to F and will give 9 Meter wide road through the said points so as to have the respondent access to her *Mangal Karyalaya*. Mr. Ghare,

learned counsel for respondent no.1 is satisfied with this submission made by the learned Senior Counsel.

9. The suit filed on behalf of respondent no.1 and the counter claim raised therein by the petitioners is still awaiting the result on its own merit from the learned Civil Judge Senior Division, Akot, the parties have yet to enter into the witness box. Therefore, any observations on merit from this Court in respect of entitlement on the part of both the parties may prejudice their respective cases. However, interest of respondent no.1-original plaintiff can be taken care of in view of the solemn statement made by the learned Senior Counsel for the petitioners.

10. In that view of the matter, I pass the following order.

ORDER

(i) Without touching to the merits or demerits of the orders passed by both the Courts below, this writ petition is disposed of.

(ii) The petitioners are directed to remove the obstruction and shall give 9 meters road to the respondent no.1-original plaintiff

through Points G-H and E-F so as to give access to respondent no.1.

(iii) Clause (2) of the order passed by learned Civil Judge Senior Division, Akot is substituted by this order.

(iv) Learned Civil Judge Senior Division, Akot is directed to decide Special Civil suit No.57/2020 within a period of 1 ½ years from today.

(v) The petitioners are directed to abide by the undertaking given to this Court and shall remove the portion as indicated in this order, within three days from today.

Rule accordingly. No order as to costs.

JUDGE

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