

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

WRIT PETITION (WP) NO.3560 OF 2020

PETITIONER : Sau. Rajni Arun Lambat,
(Original Plaintiff) Aged about 56 years, Occ. Cultivation,
 President of Omkar Education Society,
 R/o Vidya Nagari, Anandwan Chowk,
 Warora, Tq. Warora, Dist. Chandrapur.

--VERSUS--

RESPONDENTS : 1. State of Maharashtra,
 through District Collector, Chandrapur.
(Original Defendants) 2. Sub-Divisional Officer,
 Warora, Tah Warora, District
 Chandrapur
 3. Tahsildar, Warora, District Chandrapur
 4. Gram Panchayat Borda,
 through Secretary Gram Panchayat
 Borda, Tahsil Warora, District
 Chandrapur.

Dr. Ms. R. S. Sirpurkar, Advocate for the Petitioner
 Shri. K. L. Dharmadhikari, Asst. G.P. for the Respondent Nos.1 to 3
 Shri. A. N. Ansari, Advocate for the Respondent No.4.

CORAM : **N. B. SURYAWANSHI, J.**
RESERVED ON : **22.07.2021**
PRONOUNCED ON : **11.08.2021**

JUDGMENT

Hearing was conducted through Video Conferencing and the learned counsel agreed that the

audio and visual quality was proper.

2. **RULE.** Rule made returnable forthwith. Heard finally with the consent of the parties.

3. This petition filed under Article 227 of the Constitution of India challenges the order dated 01.12.2020 passed by the learned District Judge-1, Warora in Misc. Civil Appeal No.07 of 2019, thereby vacating the temporary injunction order passed in favour of the Petitioner below Exh-5 by the learned Civil Judge Senior Division, Warora in R.C.S. No.93 of 2018.

4. The Petitioner/original Plaintiff filed Regular Civil Suit No.93 of 2018, seeking injunction against the Respondents/Defendants from constructing a road and drainage line abutting to the internal road of the Plaintiff's building in Survey No.276/1 (suit property) and for ancillary reliefs.

5. For the sake of convenience, the Petitioner is referred as the Plaintiff and the Respondents are referred

as the Defendants.

6. The Plaintiff pleaded that she is the owner of land Survey No.276/1 admeasuring 0.81 H.R., which was converted into non-agricultural purpose (residential purpose) by permission of the Sub-Divisional Officer, Warora dated 20.04.2005. On part of the suit property, a School building is constructed and on the remaining part, a layout for 17 residential plots was sanctioned. The Plaintiff is a President of Omkar Education Society to whom, the suit property is given on lease. By filing application (Exh-5), the Plaintiff sought temporary injunction prohibiting the Defendants from constructing a road and drainage line in the suit property.

7. The suit was resisted by the Defendant No.4 Gram Panchayat contending that the persons residing in Survey No.275/1 and 275/2 are facing hygiene problem because of accumulation of drainage water etc. Therefore, they approached the Gram Panchayat and the Gram Panchayat asked the Plaintiff to clear the road, so that the accumulated water can be diverted. A map was placed on

record showing the actual position on the spot, which showed that the natural water and drainage water is accumulating around the residential area of Gat No.275/1 and 275/2. It is further pleaded that from the suit property, 15 Mtr. Development Plan road is proposed. If the said road is constructed, the drainage line can be laid along the side of the said road. Hence, considering the health issues being faced by the residents of Survey No.275/1 and 275/2, it is necessary that the said road be cleared.

8. The trial Court granted temporary injunction in favour of the Plaintiff. However, the Appellate Court vacated the temporary injunction granted in favour of the Plaintiff. The Plaintiff is aggrieved by the order of the Appellate Court.

9. Heard the learned Advocate for the Petitioner and the learned Advocate for the contesting Respondent No.4 and the learned Assistant Government Pleader for the Respondent Nos.1 to 3.

10. The learned Advocate for the Petitioner submitted that the layout plan, which was submitted by the Petitioner was not acted upon till today. Plot Nos. 1 to 17 shown in the layout plan are being used as a play ground of the School. On 10.05.2018, the Petitioner has filed an application before the Sub-Divisional Officer seeking conversion of the suit land from the residential to educational and play ground purposes (public and semi public uses), which is still pending for consideration. It is submitted that if the drainage line is permitted to be constructed from the suit property, that would adversely affect the health of the students. By placing reliance on the map produced on record alongwith the Court Commissioner's Report, it is submitted that the drainage line can be laid abutting to the compound wall of the School. There is non application of mind on the part of the Appellate Court in not appreciating that if the drainage line is laid in the suit property, it would affect the health of the children taking education in the School. The trial Court by giving proper reasons granted temporary injunction in favour of the Petitioner. The Appellate Court, however, erred in upsetting the said order. The impugned order

passed by the Appellate Court is therefore liable to be quashed and set aside.

11. Per contra, the learned Advocate for the Respondent No.4, vehemently submitted that as per the Development Plan of the year 1991, 15 Mtr. wide road is proposed on the Government Land, which passes through the suit land and the Respondent No.4 is intending to construct the said 15 Mtr. road. By pointing out Annexure-III, the learned Advocate submitted that the Petitioner has violated the Condition Nos.1, 3, 6 and 12 of the NA Order, by changing the user of the said land. According to the learned Advocate, the Appellate Court has properly appreciated the material on record and has rightly vacated the temporary injunction granted in favour of the Petitioner.

12. The learned Assistant Government Pleader by placing reliance on the affidavit-in-reply filed on behalf of the Respondent No.3 - Tahsildar, submitted that the building constructed by Omkar Education Society is on the land owned by the Government. The Petitioner is owner of

only 17 residential plots shown in the layout and she is not the owner of area shown for Semi Public use. The Petitioner had no authority to lease this area on which School building is constructed. He further submitted that, by constructing a compound wall, the Petitioner has encroached on the land reserved for 15 Mtr. development plan road. Residential localities in Survey Nos.276/2, 275 and 277 are adjacent to the suit property. Due to the construction of compound wall, the sewage and rain water is getting accumulated in these localities, which is causing health problems to the residents. He therefore submitted that the Appellate Court was right in vacating the injunction granted in favour of the Petitioner.

13. Perusal of the documents on record including the maps, the plaint, written statement and the reply of the Respondent No.3, *prima facie* indicate that the School building is constructed on Government Land. The Petitioner has failed to give proper description of the property, in terms of Order 7 Rule 3 of the Code of Civil Procedure. The Petitioner appears to be owner of 17 residential plots in Survey No.276/1. The record further

indicates that 15 Mtr. development plan road passes through Survey No.276/1 and 276/2, which extends upto Survey No.277. People are residing in adjoining Survey Nos.276/2, 275 and 277. Due to the construction of compound wall by the Petitioner, which in fact is an encroachment on the Government land, there appears no outlet to the sewage water and rain water flowing from the residential area. The water is accumulating around the residential houses of the locality and it is causing serious health problems to the residents.

14. The trial Court granted injunction in favour of the Petitioner only on the ground that the construction of the drainage line would cause health problems to the children taking education in the School. The trial Court has ignored the record, the breach of NA conditions by the Petitioner and illegal constructions of the Petitioner. It also failed to consider the contentions of the Respondents and the problems faced by the residents of adjoining localities.

15. The Appellate Court by appreciating the documents on record and the contentions of the respective

parties was justified in exercising the discretion in vacating the injunction order. I do not find any merit in the challenge raised by the Petitioner, no case is made out by the Petitioner to exercise extra ordinary writ jurisdiction. The petition, is therefore, **dismissed** with no order as to costs.

JUDGE

TAMBE

16. At this stage, the learned Advocate for the Petitioner prays that the status-quo order dated 21.12.2020 passed in favour of the Petitioner may be continued. Since the petition is dismissed on merits, I am not inclined to continue the status-quo order, hence the prayer is rejected.

JUDGE

TAMBE