

(1)

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

WRIT PETITION NO.10210 OF 2021

**EKTA KRIDA MANDAL'S EKTA VACHNALAYA, THR. IT'S
PRESIDENT OMPRAKASH NATHULAL JAISWAL AND
ANOTHER
VERSUS
BABAN MURLIDHAR PATUNKAR**

...
Mr V. S. Undre, Advocate for petitioners;
Mr S. B. Joshi, Advocate for respondent

CORAM : SMT. BHARATI DANGRE, J.

DATE : 22nd February, 2022

PER COURT:

1. Heard the learned Counsel for the petitioners and the learned Counsel for the respondent and perused the writ petition along with it's annexures.

2. The petitioners are the original defendants to Regular Civil Suit No.167/2020, instituted by one Baban Murlidhar Patunkar for perpetual injunction.

The plaintiff in the said suit described the suit property in para 1 of the plaint and the property is an open Plot No.48, admeasuring 30x50 sq.ft., 139 sq. mtrs. of Gaothan Extension Scheme, situated in Gut No.1081, Kalyan Nagar, village Bidkin,

(2)

Tq. Paithan, Dist. Aurangabad and the boundaries of the suit property are also stated.

3. The plaintiff pleaded that the Tahsildar Paithan, around year 1997 declared Gaothan Extension Scheme for village Bidkin and Plot No.48 was sanctioned in favour of the plaintiff vide his order bearing No. Jamabandi/P/S/4212/1997, dated 10/08/1978. It is pleaded by the plaintiff that he deposited price of the plot in the Government Treasury and direction was issued by the Tahsildar, Paithan under his order dated 10/08/1978, to hand over the possession of the said plot to the plaintiff and to carry out panchnama and execute possession receipt. This order was implemented and on 15/09/1978, the Talathi Bidkin, vide J.K. /76/JM/2/CR 69, handed over the possession of the plot mentioned as suit property to the plaintiff by executing possession receipt in his favour. It is pleaded that from that date, he became the owner and possessor of the plot No.48 and is in continuous possession thereof.

4. Accordingly, he also got his name mutated in the record of the Grampanchayat, which was entered into after carrying out

(3)

necessary enquiry and 8-A extract was issued in favour of the plaintiff and plaintiff is paying property tax for the said plot.

5. Since the defendants engaged themselves in carrying out constructions on the said property, the suit came to be filed seeking relief of perpetual injunction against the defendants. On the defendants being noticed, he filed his written statement, denying the claim in the plaint and by setting specific plea to the effect that the suit plot is allotted to the defendants, since they applied for allocation of the land for the purpose of their Trust and on 06/08/2002, the Grampanchayat passed a Resolution and accorded it's 'no objection' for allotment of plot No.48, situated in Gut No.1081 in their favour. It is specifically pleaded in the written statement that the Trust of the defendant has applied for the land and Grampanchayat accorded 'no objection certificate' and accordingly on 07/12/2019, in terms of the order of the Collector, 1500 Sq.Ft. land in Gut No.1081 was allotted to defendant Trust, which was to be used for the purpose of Library and Gymnasium. The specific plea is to the effect that the property was mutated in the name of the defendant as per the mutation entry No.286 effected on 31/08/2017 and the claim set

(4)

out in the written statement is that the suit property is in possession of the defendants.

6. In the said suit, an application under Order XXXIX Rules 1 and 2 came to be filed seeking temporary injunction and the learned Judge, considering the said application, exhaustively referred to rival pleadings in the plaint and the written statement, and determined the three parameters for grant of injunction, namely, prima facie case, balance of convenience and irreparable loss in favour of the plaintiff.

7. Perusal of the impugned order passed by the Trial Court, granting injunction in favour of the plaintiff, specifically record the evidence produced by the plaintiff in support of the averment in the plaint, being, the verified copy of the Jamabandi as well as panchnama and possession receipt dated 10/08/1978, under which, the plaintiff was put in possession of suit property. The defendants claimed that said documents are fraudulently obtained, but this objection is rejected by recording that this document inspire confidence.

(5)

The panchnama dated 10/08/1978 as per the order of the Tahsildar in respect of the plot with the boundaries set out therein, has been relied upon by the learned Judge to record that the possession of the suit plot is with the plaintiff. This was accompanied with the possession receipt dated 10/08/1978, by which, plot No.48, admeasuring 30x50 sq.ft. was handed over to the plaintiff. This document, being under the seal and signature of the Tahsildar, forms the fulcrum of the order of injunction granted in favour of the plaintiff.

8. As against this, as far as the claim of the defendants is concerned, the learned Judge has recorded that, they have not filed on record the order dated 07/12/2009, though they claimed that by this order of the Collector, the suit property is allotted to them. Recording that, no document has been produced to demonstrate the allocation of the suit property and in support of the plea that they were put in possession of the property, on 31/08/2017, mutation entry recorded in the name of the defendants in the register of the Grampanchayat, was not lent any credence. Recording that, the defendants have not filed documents prima facie showing that the suit property was allotted to them and/or they are in possession of the suit property, the

(6)

injunction has been granted and the defendants are temporarily restrained from carrying out constructions over the suit property and obstructing the peaceful possession of the plaintiff over the suit property, till the decision of the suit.

9. This order passed by the learned Civil Judge Senior Division, Paithan, has been upheld by the learned District Judge, Aurangabad in Misc. Civil Appeal No.102/2020.

10. The learned Counsel for the respondent/original plaintiff has filed his reply and along with the same, he has placed on record a copy of the writ petition filed by the President of the petitioner No.1 in this Court, where a writ of mandamus is sought against the Collector, Aurangabad, to decide the proposal/application filed by the petitioners on 30/05/2008, in accordance with law and in terms of the policy of the Government as contained in its Resolution. A perusal of the petition would reveal that the petitioner Trust is a Krida Mandal and running Ekta Vachanalaya at Bidkin and since there is Government Gairan land in Gut No.1081 at village Bidkin, the petitioners had made an application for grant of 1500 sq.ft. land for Vachanalaya and the writ petition plead that despite the said application being made and the village

(7)

panchayat accorded the 'no objection certificate' for allotment of the plot in favour of the petitioners, the collector has failed to take any decision. It is in this background, a writ of mandamus is sought to be issued against the Collector, for taking decision on their proposal for allotment of land for Vachnalaya from Gut No.1081 at village Bidkin.

The aforesaid writ petition, when carefully read, assert a fact, that there is no allotment of land from Gut No.1081 in favour of the Ekta Krida Mandal and this petition being filed on 30/03/2021, the position as on date is reflected therein.

11. Merely because the Grampanchayat has granted permission to carry out constructions, which is relied upon by the learned Counsel for the petitioners, would not be a sufficient proof of allotment of the suit plot in favour of the petitioners and both the Courts have considered the factual position and granted temporary injunction in favour of the plaintiff, by specifically recording that the defendants have failed to traverse to the plaintiff that they were put in possession of the suit plot in the year 1978 itself.

I do not see any legal infirmity in the aforesaid orders and therefore, by upholding the same, the writ petition is dismissed.

Needless to state that the observations made above are restricted to the decision on the application filed for the temporary injunction and the suit shall be decided on it's own merits.

(SMT. BHARATI DANGRE, J.)

sjk