

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.6622 OF 2021

Shahaji Shankar Deshmukh

..Petitioner

Versus

Punjab Ramdas Salunkhe and Ors.

..Respondents

Mr. Surel S. Shah a/w Aniket Deshmukh & Jayesh Mestry, for the
Petitioner.

Mr. Dayanand c. Awari, for the Respondents.

CORAM : NITIN W. SAMBRE, J.

DATE : 1st MARCH, 2022

PC.

1. The petitioner/plaintiff initiated RCS No.339 of 2019 on the file of Joint Civil Judge Junior Division, Karmala against defendant for removal of encroachment by demolishing structure, permanent injunction, not to carry out construction.

2. The prayer for injunction moved by way of application Exh.5 came to be rejected vide order dated 17th February, 2021 which is confirmed by the learned District Judge. As such, this petition.

3. Counsel for the petitioner Mr. Surel Shah would urge that the construction of the respondent/defendant is without having sanction from the competent authority and that being so, Court

below ought to have granted injunction in the matter. He would further claim that the petitioner's/plaintiff's easementary rights are affected by virtue of the illegal construction carried out by the respondent. That being so, it is necessary that both the orders be quashed and set aside and the Court be pleased to grant injunction restraining the respondent/defendant from carrying out any construction.

4. Counsel for the respondents would support the orders impugned, as according to him, construction of the present petitioner/plaintiff is without any authority. He would claim that even claim in the suit is not specific which has prompted for both the Court below for grant of prayer for injunction.

5. I have considered the rival submissions.

6. It is the claim of the petitioner that he is owner of land which is specifically described in paragraph 1(a) as the same is renovated by him. According to him, land mentioned in paragraph 1(b) is also owned by the petitioner/plaintiff which is encroached by the defendant. As such, he has claimed that by mandatory injunction respondent be ordered for removal of construction. Trial Court while considering prayer for grant of temporary injunction had appreciated rival claim and had noted that the petitioner is protracting litigation as there was ad-interim protection in the nature of injunction operating in his favour and the act of the

petitioner amounts to abuse of process.

7. Lower Appellate Court while confirming said order has recorded that after appreciating the rival contentions on merits, it has noticed that the view expressed by the Trial Court is possible view while rejecting the prayer for temporary injunction. It appears that the defendant/respondent has already moved for sanction of construction before the competent authority. The communication *inter se* between Tahsildar, Town Planning authority establishes that there exist such communication which has prompted both the Courts below to believe that respondent has moved for grant of sanction of his construction. Rather in response to the Court's query, Mr. Surel Shah, appearing for the petitioner/ plaintiff admitted that his structure on the suit property is not sanctioned by any of the authorities. In the aforesaid background, both the Court's below have rejected the prayer for grant of temporary injunction. I hardly, see any reason which warrants interference in the impugned order particularly when the Court below was sensitive to the fact that for claiming deem sanction in favour of the respondent/defendant, there is some positive material on the record against the concurrent findings. No case for interference in the extraordinary jurisdiction of this Court is made out.

8. As such petition fails, dismissed.

[NITIN W. SAMBRE, J.]