

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.148 OF 2021
WITH
INTERIM APPLICATION NO.1578 OF 2021
IN
APPEAL FROM ORDER NO.148 OF 2021

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M/s.Gajra Group, Partnership Firm
Vs.
Divisional Engineer (M), West
Central Railway & Ors.
...Appellant
...Respondents

WITH
INTERIM APPLICATION NO.2384 OF 2022
IN
APPEAL FROM ORDER NO.148 OF 2021

Divisional Engineer (M), West
Central Railway & Anr.
...Applicants

IN THE MATTER BETWEEN

M/s.Gajra Group
Vs.
Divisional Engineer (M), West
Central Railway & Anr.
...Appellant
...Respondents

Mr.Subhash Jha a/w Meena Sharma and Ms.Alka Pandey i/b Law
Global Advocates for the Appellant.

Mr.Anil C. Singh, Learned ASG a/w Mr.Aditya Thakkar,
Mr.Pranil Sonawane, Ms.Savita Ganoo and Mr.Pranav Thackur
for the Respondent.

Mr.Ashok M. Misal, for Respondent No.3.

CORAM : C.V. BHADANG, J.

DATE : 17 AUGUST 2022

P.C.

. This Appeal is taken up for final disposal by consent of parties.

2. The challenge in the Appeal at the instance of the Appellant-Original Plaintiff, is to the order dated 9 December 2020 passed by the learned Senior Civil Judge at Panvel, below Exhibit-5 in Special Civil Suit No.245 of 2020. By the impugned, order the learned Trial Court has vacated the order of status-quo, which was granted on 8 December 2020, below Exhibit-12. It can thus be seen that the status-quo order before the Trial Court was operating for a day i.e. from 8 December 2020 to 9 December 2020.

3. I have heard Mr.Jha, the learned counsel for the Appellant and the Mr.Singh, the learned Additional Solicitor General for the Respondent-State. With the assistance of the learned counsel for the parties, I have gone through the record.

4. According to the case made out in the plaint, the Appellant has purchased 5553 sq.mts. of land, in an auction

conducted in pursuance of a mortgage in favour of the Bombay Mercantile Co-operative Bank Ltd. The suit land is bearing TPS No.364 at Panvel-Matheran Road, Panvel, District-Raigad, Maharashtra.

5. The Appellant claims that the Respondent-Railways have encroached on the said land and the compound wall erected was demolished. The Appellant, therefore, filed aforesaid suit for declaration and permanent injunction, in which an Application at Exhibit-5 was taken out for a temporary injunction restraining the Respondents or anybody on their behalf, from carrying out any work on the said plot of land.

6. It appears that in pursuance of an order dated 11 December 2019 in WP No.11459 of 2018 a measurement was carried out and the copy of the measurement has been produced on record in Interim Application No.1578 of 2021. According to the learned counsel for the Appellant the Central Railway is staking a claim for 1,600 sq. mts. of land and the City and Industrial Development Corporation ('CIDCO') is also claiming right over 700 sq.mts. of the land and thus after these claims by the Railway and CIDCO are considered the Appellant is left with 3253 sq.mts. of land.

7. Be that as it may, the Appellant has challenged the impugned order vacating the order of status-quo, in the present Appeal. The record disclosed that this Court (V.G. Bisht, J.) by an order dated 24 December 2020, after hearing the parties including the Respondent No.3-Railways has restored the order of the status-quo. The said order is operating since then.

8. Mr.Singh, the learned ASG, submitted that there is suppression of material facts in the plaint. In this regard it is pointed out that a notice was issued to the Appellant in the year 2018 for demolition of the compound wall and in pursuance of the said notice, the wall came to be demolished. This fact is not disclosed in the plaint. Secondly, it is pointed out that Writ Petition No.11459 of 2018 came to be amended. However, the Appellant incorporated the unamended prayer clause of the Petition in the plaint.

9. It is submitted that the learned Trial Court has rightly vacated the order of status-quo.

10. The learned ASG pointed out that the status-quo granted on 8 December 2020 was passed ex-party and without hearing the Respondent No.3 and on the very next date the order of status-quo came to be vacated. He therefore, submitted that no case for interference is made out. The learned ASG pointed

out that on account of the order of status-quo an important project of the Railways, which is in public interest, has been held up.

11. Mr.Jha, the learned counsel for the Appellant, has disputed that there is any suppression of material facts.

12. I have carefully considered the rival circumstances and the submissions made. As noticed earlier this Court by an order dated 24 December 2020 after hearing the parties have restored the order of status-quo which is operating since then. It is further necessary to note that the Application Exhibit-5 is still pending before the Trial Court in which the pleadings are stated to be complete.

13. In my view, therefore, it would be appropriate that the Application Exhibit-5 itself heard and decided by the learned Trial Court at an early date.

14. In that view of the matter the Appeal is disposed of.

15. The learned Trial Court shall hear and decide Application Exhibit-5 on its own merits and in accordance with law after hearing the parties, without being influenced by the

impugned order dated 9 December 2020 as well as the order of status-quo granted by this Court.

16. Rival contentions of parties on merits are left open.

17. The parties to appear before the Trial Court on 24 August 2022.

18. The Trial Court shall proceed to hear and decide Application Exhibit-5 as expeditiously as possible and preferably within a period of four weeks from 24 August 2022.

20. The status-quo granted on 24 December 2020 shall continue to operate during the pendency of the Application Exhibit-5.

Pending Civil Applications, if any, are also disposed of.

C.V. BHADANG, J.