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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12568 OF 2022

Mohan Raghunath Jadhav & Ors.

.. Petitioners

Versus

Chief Officer, Satara Municipal Council & Ors.

.. Respondents

.....

- Mr. Atul Damle, Senior Advocate i/by Mr. Prashant P. Kulkarni for Petitioners
- Mr. P.B. Gujar for Respondent No. 1
- Mr. Vishwanath S. Talkute for Respondent Nos. 3 to 25

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CORAM : MILIND N. JADHAV, J.

DATE : DECEMBER 09, 2022

P.C.:

1. By the present Petition filed under Article 227 of the Constitution of India, Petitioners are challenging the judgment and order dated 12.10.2022 passed by the learned District Judge – 4, Satara (for short “**Trial Court**”) dismissing Misc. Civil Appeal No.204 of 2022 filed against order dated 10.08.2022 passed by the learned 5th Civil Judge Junior Division, Satara rejecting Application below Exhibit-101 filed by Petitioners (original Plaintiffs) in regular Civil Suit No.126 of 2020.

2. Petitioners – original Plaintiffs filed Regular Civil Suit No.126 of 2020 before the learned Civil Judge Junior Division, Satara for declaration and injunction against the Shahupuri, Grampanchayat in respect of the suit property described paragraph No.1 of the plaint.

3. Mr. Damle, learned Senior Advocate appearing for the Petitioners contended that by order dated 07.07.2020 Exhibit-5 Application was allowed by the learned Trial Court. Challenge to the said order by Respondents before the District Judge, Satara was successful and by order dated 23.09.2020 the Exhibit-5 order was set aside. That Petitioners filed Writ Petition No.43 of 2021 to challenge the order dated 23.09.2020 wherein this Court by order dated 09.10.2020 passed order of status quo. The said Writ Petition is Pending before this Court. That by order dated 27.06.2022 Writ Petition No.43 of 2021 was disposed of granting liberty to the Petitioners to challenge any purported notices that would be issued under Sections 52 and 53 of the Maharashtra Regional and Town Planning Act, 1966 (for short “**MRTTP Act**”) by the Municipal Council, since the impugned notice in the Writ Petition was issued by the Grampanchayat.

3.1. He submitted that by notification dated 07.09.2021 the territorial limit of the Municipal Council of Satara was extended and Grampanchayat, Shahupuri was dissolved and its area merged into the jurisdiction of the Municipal Council. He submitted that due to this development Respondent Nos.3 to 25 filed impleadment Application in Regular Civil Suit No.126 of 2020. By order dated 07.09.2021 the learned Trial Court allowed their impleadment. Petitioners challenged

the impleadment order in Writ Petition No.315 of 2022 which is also pending in this Court. He submitted that in the meanwhile, Respondent No.1 - Municipal Council issued notices dated 04.05.2021 and 02.06.2021 under Sections 52, 53 and 54 of the MRTP Act to the Petitioners. Petitioners, therefore filed Application under Exhibit-95 for amendment of plaint to challenge the two MRTP notices and also seek injunction against the Municipal Council to act on those notices. Petitioners also filed another Application under Exhibit-101 for temporary injunction against the Municipal Council to restrain them from implementing the two notices. Initially, by order dated 08.07.2022 the learned Trial Court directed the parties to maintain status quo. Subsequently by order dated 10.08.2022 amendment application under Exhibit-95 was allowed. However, by order of even date Exhibit-101 for temporary injunction was dismissed. Petitioners hence filed Misc. Civil Appeal No.204 of 2022 before the learned District Judge, Satara to challenge the order dated 10.08.2022 passed under Exhibit-101. By order dated 12.10.2022, the Misc. Civil Appeal was dismissed and the temporary injunction order was confirmed.

4. I have heard Mr. Atul Damle, learned Senior Advocate for Petitioners; Mr. Gujar, learned Advocate for Respondent No.1 and Mr. Talkute, learned AGP for Respondent Nos.3 to 25 with their able assistance and perused the record and pleadings in the case.

5. In the above backdrop, the order dated 12.10.2022 is now required to be seen. However, before I proceed, I feel it necessary to first look to the order dated 10.08.2022 briefly, against which the Misc. Civil Appeal was filed and which came to be dismissed by the impugned order.

6. Perusal of order dated 10.08.2022 below Exhibit-95 reveals that the purported notices under MRTP Act in respect of the suit property are *prima facie* valid and legal on account of the fact that in the year 1994 Petitioners i.e. owners of the suit property had got a sanctioned layout plan of the suit property as per order passed by the Collector which showed an area of 853 sq. meters as road. It is seen that terms and condition of the NA order to which the NA plan is annexed and sought to be relied upon by the Petitioners are also binding on the Petitioners. It is seen that once the layout is sanctioned, the ownership of the road shown in the layout plan vests in the local authority. In the instant case, it is seen that Petitioners had carried out large scale encroachment on the suit property by building a wall and it is against this encroachment that the statutory notice has been issued under the MRTP Act. It is also seen that Petitioners have been given liberty to challenge the notices independently in accordance with law by this Court which avenue is open to them under the MRTP Act. It is further seen that it is the case of Respondents that challenge to the

MRTP notices is an independent cause of action under the MRTP Act which provides for an appropriate remedy as it is a code unto itself and the statutory notices cannot be challenged in the pending suit. Records clearly reveals that suit property is a sanctioned proposed public road and that the said proposed road was used by the people of the locality. That the said road joins the main road from Molacha Odha to Budhwar Naka, Rajwada. Record further reveals that the Grampanchayat has constructed drainage on both sides of the said road. This position is undisputed. If it was a private road, the Grampanchayat would not have constructed the drainage. Petitioners have closed the disputed road on the ground that they are owners of the suit property. Perusal of the findings in the order dated 10.08.2022 passed by the learned Trial Court leaves no doubt in mind that the proposed sanctioned layout road is in existence since long. That one of the conditions in the NA order is that the nature of the land will not be changed without permission of the Collector. Though Petitioners have relied upon an Application dated 10.10.2019 made to the Collector seeking resumption of the suit land (i.e. proposed sanctioned layout area) and mutation entry No.42369 shows Petitioners' name in respect of the suit property, on both these counts also the Petitioners' case fails. Records indicates that despite the Application dated 10.10.2019 of the Petitioners, Collector has not taken any decision on the same. Further by virtue of mutation entry

No.42257, the suit property stands in the name of the Grampanchayat, Shahupuri. Therefore, Petitioners' claim of ownership of the suit property i.e. the sanctioned layout road has been rightly rejected by the Trial Court.

7. Another important aspect is that, if the Petitioners claim ownership of the suit property which is the proposed sanctioned layout road, then it can only do so by making an Application for revision of the sanctioned layout plan on the basis of documentary evidence pertaining to their ownership. This has however not been done. Instead Petitioners have constructed a cement compound wall on the suit property / road and permanently blocked the road without having any legal right to do so. It is pertinent to note that Petitioners have never denied and have in fact admitted the existence of the said proposed sanctioned layout road shown in the NA plan in the sale deed executed by them. Perusal of the NA plan reveals that on either side of the said road Petitioners have developed the property.

8. Mr. Damle would submit that the action of Respondent No.1 in issuing the purported notices under Sections 52 and 53 of the MRTTP Act by the Corporation in respect of the suit property is arbitrary and malafide. He submitted that in view of order dated 09.10.2020 directing parties to maintain status quo, wherein the original defendant i.e. Shahupuri Grampanchayat was a party would still

prevail and since Respondent No.1 - Municipal Council has stepped into the shoes of the Grampanchayat, Shahupuri, no coercive action can be taken against Petitioners. He submitted that construction carried out by Petitioners on the suit property in the form of a wall therefore cannot be disturbed and needs to be protected. He submitted that it is the Respondents' alleged case that construction of the wall is unauthorized and on the public road inconveniencing the public at large. He submitted that Petitioners rely upon the map of the suit property annexed at page No. 364 to the Petition which was recommended for approval as an amendment by the Assistant Director of Town Planning, Satara on 04.01.1983 and the said map shows the 12 meters proposed road. He submitted that the suit property where the proposed 12 meters wide road is shown is a DP road which was never been developed nor the property was ever acquired for the said proposed D.P. Road. Petitioners are the owners of the suit property on which the proposed D.P. Road is shown. He therefore submitted that though there are concurrent orders passed by the lower Courts, this Court should appreciate the NA plan which does not show the existence of the proposed D.P.Road or any road and direct status quo.

9. In the above background, when Misc. Civil Appeal was filed to challenge the order dated 10.08.2022, there were certain undisputed facts which need to be recorded. These undisputed facts go

to the root of the cause of action. These undisputed facts are as under:-

- (i) Plaintiff's i.e. Petitioners are original owners and possessors of suit land i.e. Survey No.405/23H+25B, situated at Karanje Tarf, Satara. As per the proposed zone plan, south-north road of 12 meter in width was shown in the said land. As per the order of the District Collector, Satara dated 20.05.1994, Petitioners got a sanctioned lay out of the said land. In the said lay out plan the said road of 12 meter in width was shown. As per mutation entry No. 22655, name of Grampanchayat Shahupuri came to be recorded in the revenue record in respect of this road i.e. the suit road.
- (ii) By notification dated 08.01.2018, Government of Maharashtra cancelled the development plan, wherein the suit road was shown as proposed road. Petitioners have filed application dated 20.09.2019 to the District Collector, Satara seeking restoration of their names to the land under the suit road. By order dated 16.10.2019 of the Tahasildar, Satara, vide mutation entry No. 42369 dated 26.01.2020, the earlier mutation entry No. 22655 was cancelled and name of Petitioners was recorded in the revenue record against the area of the suit road. However, by order 03.03.2020, Tahasildar, Satara cancelled his earlier order dated 16.10.2019 and by a subsequent mutation entry No. 42547 dated 04.03.2020 restored the name of Grampanchayat, Shahpuri in the revenue record for the area of the suit road.

- (iii) In 2018 Petitioners constructed a compound wall on boundary of the suit road. On receipt of complaints from the plot holders about the same, the Shahupuri Grampanchayat issued notice dated 07.12.2019 calling upon the Petitioners to remove the compound wall.
- (iv) Hence Petitioners filed Regular Civil Suit No. 126 of 2020 against the Sarpanch and Gramsevak of Shahupuri Grampanchayat seeking declaration of their title to the area of the suit road and for perpetual injunction to restrain them from causing obstruction to their possession over the area under the suit road. They also filed application (Exh.5) seeking injunction to restrain the Grampanchayat from demolishing the compound wall till a final decision in the suit.
- (v) By order dated 07.07.2020 learned 5th Joint Civil Judge, Junior Division, Satara allowed the injunction application (Exh.5). The Grampanchayat preferred Misc. Civil Appeal No.61 of 2020 against the order of the Civil Judge. By judgment dated 23.09.2020 learned District Judge-2 set aside the order of the Trial Court and rejected the temporary injunction application (Exh.5).
- (vi) The Municipal Council Satara by issuing notice dated 04.05.2021 called upon the plaintiffs to show cause within 7 days as to why action for demolition of the compound wall should not be done under Section 52 and 53 of the Maharashtra Regional and Town Planning Act, 1966. The plaintiffs submitted reply dated 12.05.2021 simply denying the claim of the Municipal

Council. Hence by issuing the impugned notice dated 02.06.2021 the Municipal Council called upon the plaintiffs to remove the suit wall within 30 days failing which directed to remove the compound on the suit property.

(vii) That some of the plot holders from the suit land / property and adjoining lands have appeared as third parties and they have also resisted the suit.

10. Thus, it is seen that as per the sanctioned layout plan, the suit road had come into existence and was used as a public road. That admittedly the local body has incurred substantial expenses to develop the road. The said road was admittedly in use by the general public at large but the Petitioners unauthorizedly erected the compound wall on the public road and blocked the road.

11. Admittedly, the suit road is not only shown in the town planning record but it is also shown in the layout plan sanctioned by the Collector. It is seen that in the instant case, the Collector has granted permission to Plaintiffs which is subject to terms and condition. One of the important condition is to keep the proposed DP road open to the public. Therefore, as per mutation entry No. 22655 the name of the local body is mutated in respect of the said road. It is seen that in even in the earlier mutation entry, name of the village Grampanchayat was mutated in respect of the said road. Admittedly, substantial expenses has been incurred to lay down the drainage on

the said road. Thus the said layout road has become a public road meant for a public access. The original suit was filed against the Grampanchayat on the ground of invoking challenge to the notice issued by the Grampanchayat. Though the amendment of the Petitioners was allowed, perusal shows that there are no pleadings in respect of the Municipal Council and its action after its substitution in place of Grampanchayat as the contesting defendant. Without there being any specific incorporation of pleadings relating to the action of the Municipal Council, Petitioners filed Exhibit-5 seeking relief of temporary injunction. The learned Appellate Court while deciding the Misc. Civil Appeal has returned a categorical finding which reads as under:

“ Admittedly, the concerned area of the Grampanchayat came to be inclined in the Municipal Council, Satara. Hence, on 14.06.2021 by amendment application (Exh.70) the plaintiffs merely substituted name of the Municipal Council at the place of the Grampanchayat. By the said amendment application they, however, did not make any pleading regarding the Municipal Council. The Municipal Council filed written statement dated 21.08.2021 (Exh.89) to the available pleading, wherein it has specifically mentioned regarding initiation of action under Sections 52 and 53 of the Town Planning Act. Thereafter the plaintiffs filed amendment application dated 06.06.2022 (Exh.95) to incorporate pleading with reference to the act of the Municipal Council. Thereafter, prior to actual incorporation of the pleading, on 06.07.2022 the plaintiffs filed the present application (Exh.101) seeking relief of temporary injunction against the act of the Municipal Council. Till its decision on 10.08.2022 it could not get incorporate the pleadings against the Municipal Council in plaint. Considering submissions of the parties it appears that on 10.08.2022 itself the Trial Court has allowed the amendment application. It indicates that till decision of the injunction application there was no actual incorporation of amended pleading in the plaint. There was, therefore, no question of filing reply by way of written statement to the said proposed

pleading by the Council. It further indicates that without actual pleading regarding act of the Municipal Council in the plaint the injunction application came to be decided. The plaintiffs have also not brought the amended pleadings before this Court so far. In such circumstances, prima facie there appears no reason to discard the say of the Municipal Council that the injunction application proceeded without pleading and cause of action against it.”

12. It is seen that Respondent No.1 - Municipal Council admittedly is the planning Authority under Sections 52 and 53 of the MRTP Act the planning authority can initiate development / construction. The Petitioners in the present case have erected a compound wall on suit road and blocked the road. Under Sections 182 and 183 of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Township Act, 1965, the Council can claim action for removal of such unauthorized development. Hence, the findings returned by the learned District Judge while dismissing Misc. Civil Appeal are well reasoned findings and call for no interference whatsoever. The impugned judgment and order dated 12.10.2022 is therefore required to be sustained.

13. Writ Petition is accordingly dismissed.

14. At the request of the Mr. Damle, learned Senior Advocate for Petitioners, the present order is stayed for a period of four weeks from the date of its uploading on the website of the High Court to enable the Petitioners to approach the Supreme Court.

[MILIND N. JADHAV, J.]

