

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

WRIT PETITION NO. 7201 OF 2019

Shri Netaji Subhash Chandra Smruti Samiti, Nagpur

Vs.

Anuraj s/o Brijmohan Gupta and Ors.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr. A.M. Ghare, Advocate for petitioner.
Mr. S.S. Sharma, Advocate for respondent Nos.1 & 2.
Mr. A.M. Quazi, Advocate for respondent No.3.

CORAM : MANISH PITALE J.
DATE : 24.03.2022

By this petition, the petitioner i.e. the original defendant No.2 has challenged judgment and order dated 29.04.2019 passed by the Ad-hoc District Judge-1, Nagpur (herein referred to as 'appellate Court') whereby an appeal filed by the respondent Nos.1 and 2 (original plaintiffs) has been allowed and application for temporary injunction has been granted.

2. The respondent Nos.1 & 2 have filed suit for declaration and permanent injunction, claiming that the defendants do not have right or authority to construct compound wall over the suit property, which is an open space between the residential house of the respondent

No.1 and a Skill Development Center constructed by the petitioner on behalf of the respondent No.3 – Municipal Council. It is claimed that the respondent Nos.1 and 2 are entitled for permanent injunction, restraining the petitioner and respondent No.3 from carrying out such construction.

3. In the aforesaid suit, respondent Nos.1 and 2 filed an application for temporary injunction, praying for an order restraining the petitioner and respondent No.3 from carrying out the aforesaid construction of wall. It is *inter alia* claimed that windows on the wall facing the open space would be blocked, thereby causing irreparable loss to respondent Nos.1 and 2 and that a case for temporary injunction was made out.

4. The Court of 2nd Joint Civil Judge Junior Division, Kamptee, (hereinafter referred to as ‘trial Court’) did not agree with the contentions raised on behalf of respondent Nos.1 & 2 and accordingly, rejected the application for temporary injunction.

5. Aggrieved by the same, the said respondents filed an appeal before the appellate Court. As noted above, the appeal was allowed and the application for temporary injunction was granted, thereby restraining

the petitioner from carrying out construction of any kind on the suit property i.e. the open space.

6. The present writ petition was filed challenging the said order. This Court issued notice and the respondents appeared through counsel. This Court by an order dated 03.03.2020, gave a specific direction to respondent No.3 to place on record affidavit as regards the actual state of affairs pertaining to the suit property. Pursuant thereto, the respondent No.3 filed its affidavit along with the documents and respondent Nos.1 and 2 also filed an affidavit in that regard. The contents of the said affidavits show that there are claims and counter claims as regards the question, as to whether there was any sanction for construction undertaken by respondent Nos.1 and 2 in the portion adjoining the open lane i.e. the suit property.

7. Although a request was made on behalf of the petitioner to grant some time to file an affidavit in the context of the affidavits filed by the respondents, this Court considered the matter on its own merits.

8. A perusal of the material on record prima facie shows that if the petitioner is permitted to construct the wall in question, it would block the

windows on the wall of the residential house of respondent No.1 facing the open lane. In that sense, prima facie the respondent No.1 and 2 appear to be justified in claiming that they would suffer blocking of access to air and light from the aforesaid windows on the wall facing the open lane.

9. But, equally the concern of the original defendants i.e. petitioner and respondent No.3 herein regarding access through the open lane to the Skill Development Center, already constructed, cannot be ignored.

10. It is the case of the respondent No.3 – Municipal Council that the petitioner has undertaken the construction of the Skill Development Center on the basis of funds released by the Government and access to the said Skill Development Center from the main road is only through the aforesaid open space.

11. It is also brought to the notice of this Court that earlier a Municipal School was existing at the place where the Skill Development Center has been constructed and that the open lane was indeed available for access to the said School.

12. The material on record also shows that the staircase of the Skill Development Center for access to the building of the said center can be accessed only through the open space in question, which in turn is accessible from the main road on the east.

13. In these circumstances, this Court is of the opinion that the appellate Court appears to be justified in rendering findings in favour of respondent Nos.1 and 2, as regards an urgent need to restrain the petitioner from constructing the wall in question, but at the same time the appellate Court has failed to address the concern of the original defendants i.e. petitioner and respondent No.3 herein that access to the Skill Development Center is necessary, particularly when the building of the said center is already constructed and ready. The appellate Court ought to have taken into consideration the aforesaid concern of the original defendants.

14. In view of the above, this Court is of the opinion that while maintaining the impugned order passed by the appellate Court, it needs to be modified, so as to ensure that during the pendency of the suit the Skill Development Center is not left inaccessible and that specific direction is given for ensuring that the open lane

is available for access to the Skill Development Center from the main road on the east. A case for modification of the impugned order is certainly made out on behalf of the petitioner.

15. In view of above, the present writ petition is disposed of by partly allowing the same. While maintaining the impugned order passed by the appellate Court, which restrains the petitioner from undertaking construction on the aforesaid open lane during pendency of the suit, the said order is modified by directing that the open lane shall be available for exclusive use by the petitioner and respondent No.3 i.e. original defendants during the pendency of the suit. This would ensure access to the Skill Development Center already constructed, from the main road towards the east.

16. It is further directed that the respondent Nos.1 and 2 shall maintain status quo pertaining to the wall facing the open lane and that no construction/modification pertaining to the said wall will be undertaken on behalf of respondent Nos. 1 and 2, during pendency of the suit.

17. It is made clear that the windows as they exist on the wall of the structure belonging to respondent Nos.1 and 2, facing the open lane will not be changed in any manner during the pendency of the suit. This should satisfy the concern of the rival parties during the pendency of the suit.

18. The writ petition is disposed of in above terms.

19. Needless to say, the observations made in the order passed today by this Court, are only in the context of the application for temporary injunction filed by the respondent Nos.1 and 2. The trial Court shall proceed on the merits of the matter, uninfluenced by any such observations. All questions on merits are kept open.

JUDGE

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