

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

WRIT PETITION NO. 303 OF 2023

Kasturabai Balwanta Gaikwad
Since deceased through her L.Rs.
Vanmalabai Rajendra Gaikwad .. Petitioner

Versus

The Collector Jalna and others .. Respondents

Shri Shailesh S. Chapalgaonkar, Advocate for the Petitioner.
Shri S. S. Dande, A.G.P. for the Respondent Nos.

**WITH
WRIT PETITION NO. 431 OF 2023**

The State of Maharashtra
Through Collector Office, Jalna .. Petitioner

Versus

Kasturabai Balwanta Gaikwad
Through GPA Holder
Sham Rajendra Gaikwad .. Respondent

Shri S. S. Dande, A.G.P. for the Petitioner.
Shri Shailesh S. Chapalgaonkar, Advocate for the Respondent.

**CORAM : SHARMILA U. DESHMUKH, J.
DATE : 20TH JANUARY, 2023.**

FINAL ORDER :

. Heard.

2. Writ Petition No. 303 of 2023 has been preferred by the private petitioner/original plaintiff challenging order dated 28th December, 2022 passed in Misc. Civil Appeal No. 75 of 2022, whereby the Appellate Court directed the parties to maintain

status in addition to a direction issued to the respondent authorities to comply with the provisions of Order XXXIX Rule 3 of the Code of Civil Procedure.

3. Misc. Civil Appeal No. 75 of 2022 came to be filed by the respondent/original defendants challenging two orders of the Trial Court dated 08th December, 2022, whereby the Trial Court allowed the Exhibit 05 application preferred by the plaintiff in R.C.S. No. 425 of 2022 and restrained the statutory authorities from interfering with the possession of the petitioners/plaintiffs over 04 Acres of land and by an order of even date permitted the plaintiff to construct barbed wire fencing over 04 Acres of land alleged to be in possession of the plaintiff.

4. Writ Petition No. 431 of 2023 has been filed by the State of Maharashtra/original defendant challenging the order dated 8th December, 2022 passed by the District Judge – 6, Jalna in RCS No 425 of 2022.

5. The case of the petitioner/original plaintiff in R.C.S. No. 425 of 2021 is that the deceased husband of the petitioner was allotted land by the Government in the year 1974. Subsequently by an order the allotment came to be cancelled, which order according to the petitioners has not been served upon them and by an order of 26.05.1982, land was allotted to the I.T.I. Subsequent thereto mutation entries were also cancelled. It is the case of the plaintiff that an area of 20 Acres 04 Guntha was allotted and the Plaintiff sought restraining orders in respect of 04 Acres of land alleged to be in their possession, which came to be permitted by the Trial Court by order dated 08th December,

2022 and permission was granted to the plaintiff to construct barbed wire fencing compound. During the pendency of Misc. Civil Appeal No. 75 of 2022, original plaintiff expired and on an application of the A. G. P. some of the legal heirs of the original plaintiff were brought on record as legal heirs.

6. Appellate Court by order dated 28th December, 2022, upon consideration of the photographs placed on record by the A.G.P. *prima facie* observed that construction being carried by the legal representatives, would change the nature of the property and as such directed the parties to maintain status quo.

7. Learned counsel for the petitioner submits that the construction being carried out was in accordance with the order dated 08th December, 2022 passed by the Trial Court permitting the plaintiff to construct barbed wire fencing.

8. Per contra, learned Assistant Government Pleader by relying on the photographs, which have been produced with the compilation of documents has demonstrated that instead of wire fencing a compound wall of tin sheets has been constructed by demolishing earlier compound wall and by referring to the map, which is also annexed, has submitted that the plaintiffs under the garb of constructing compound wall has levelled the area which was in possession of I.T.I.

9. Considering the rival submissions of the parties and upon perusal of the photographs which have been placed on record, *prima facie* it appears that something more apart from barbed wire fencing is attempted to be constructed on the suit property.

The Appellate Court by order dated 28th December, 2022 had directed the parties to maintain *status quo* and the matter was adjourned for hearing of the appeal. I do not find any reason to interfere with the order of the Appellate Court in as much the Appeal is yet to be heard finally. This Court is informed by the parties that the appeal is listed for hearing today. In my opinion, considering the position of the suit property as demonstrated from the photographs placed on record by the learned A. G. P. the order dated 28th December, 2022 passed by the District Judge is required to be modified and is accordingly modified by passing following order.

O R D E R

A. The original plaintiffs/petitioners in Writ Petition No. 303 of 2023 are restrained from carrying out any construction or carrying out any activity on the suit property bearing Sy. No. 49 adm. 20 Acres 4G situated at Jalna till the hearing and final disposal of the Misc. Civil Appeal No. 75 of 2022.

B. Let the parties appear before the District Judge on Monday i. e. 23rd January, 2023 , when Misc. Civil Appeal No. 75 of 2022 will be taken up for hearing by the District Judge.

C. Registry of this Court as well as parties to communicate copy of this order to the District Judge, Jalna.

D. The respondents/original defendants to comply with the directions passed by the District Judge as regards compliance of Order XXXIX Rule 3 of the Code of Civil Procedure.

E. District Judge to decide the appeal on its own merits, in accordance with law, expeditiously and in any event within a period of two (02) weeks from the date of conclusion of hearing of the parties.

10. Writ petitions are accordingly disposed of in above terms.

11. Parties to act on authenticate copy of this order.

[SHARMILA U. DESHMUKH, J.]

bsb/Jan. 23