

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

31 WRIT PETITION NO.4151 OF 2017

**DNYANESHWAR SURYABHAN GADE
VERSUS
THE COLLECTOR AHMEDNAGAR AND OTHERS**

...
Advocate for Petitioner : Mr. Deepak D. Chaudhari
AGP for Respondent – State : Mr. S.S. Dande
Advocate for Respondent No.2 : Mr. Sudhir G. Bhalerao

...
WITH
CA/7570/2017 IN WP/4151/2017

...
CORAM : SHARMILA U. DESHMUKH, J.
DATE : 11-01-2023

PER COURT :

. Heard the learned counsel appearing for the parties.

2. The order of the trial Court dated 10.03.2017 is impugned in the present petition, whereby the trial Court refused to waive the period of 60 days contemplated under Section 80 of the Code of Civil Procedure. The learned counsel for the petitioner submits that a notice was received on 27.01.2017 from the respondent for removal of the alleged encroachment, which was the subject matter of the suit proposed to be filed by the petitioner. The petitioner issued a notice under Section 80 of the CPC to the respondent authority on 27.02.2017 and filed the application to waive the period of 60 days and sought permission to file the suit

citing urgency in view of the notice dated 27.01.2017. Perused the impugned order dated 10.03.2017. The trial Court has refused to waive the period of 60 days on the ground that there is no title document of the petitioner.

3. Without going into the validity of the observations made in the impugned order dated 10.03.2017, the present petition can be disposed of for the reason that the notice under Section 80 was issued on 27.02.2017 and the period of 60 days is already over and as such there is no impediment for the suit to be taken on record. The writ petition is accordingly disposed of.

4. In view of disposal of the writ petition, Civil Application stands disposed of.

5. By order dated 27.04.2017, status quo was granted by this Court which the learned counsel for the petitioner prays to continue till the filing of the suit. The said request is vehemently objected by the learned counsel for the respondents on the ground that the petitioner has no title in respect of the subject properties acquired by the respondent no.2.

6. Considering the fact that the status quo order has been passed on 27.04.2017 and the respondent - authority had not bothered to file any application for modifying the said order or vacating the order of status-quo, at this stage, if the status quo order is extended for a period of two weeks for filing of the suit, no prejudice would be caused to the respondents.

7. Status quo granted by this Court vide order dated 27.04.2017 is extended for a period of two weeks from today for filing of the suit. The trial Court to consider the application for interim relief on its own merits and without being influenced by the fact that the order of status quo has been running against the respondents since the year 2017.

(SHARMILA U. DESHMUKH, J.)

GGP