

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4852 OF 2022

MADHU RAMESH JAIN
VERSUS
SHREE DEVELOPERS JALGAON THROUGH ITS PARTNER
SHRIKANT GOPALDAS KHATOD

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Mr. Satyajit S. Bora, Advocate for the Petitioner.
Mr. S.H. Tripathi, AGP for the Respondent.

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CORAM : SHARMILA U. DESHMUKH, J.
DATED : JANUARY 12, 2023.

PER COURT :

1. Heard.
2. The challenge in the petition is to the order dated 03.02.2022 passed in Misc.Civil Appeal No.54 of 2019, rejecting the appeal preferred by the Petitioner challenging the order dated 25.11.2021 passed by the 2nd Joint Civil Judge, Junior Division, Jalgaon below Exh.79 in Regular Civil Suit No.155 of 2013.
3. Regular Civil Suit No.155 of 2013 was filed by the Respondent for removal of encroachment and seeking possession of the encroached property. The learned counsel for the Petitioner submits that during the pendency of the suit, compound wall of the Petitioner's property collapsed and the application was made for

construction of the compound wall, by an application below Exh.87, which was rejected as against which Misc.Civil Appeal No.34 of 2020 was filed, which came to be partly allowed. By order passed below Exh.79, an application filed by the Respondent, seeking removal of second wall of tin shed, the trial Court allowed the application and granted temporary injunction directing the Petitioner to remove the second tin sheet wall within one week.

4. Learned counsel for the Petitioner submits that in fact, there is no second new wall of tin sheet and the existing tin sheet wall is in line with the partly collapsed compound wall. He would invite the attention of this Court to the photographs annexed at page Nos.161 to 163 of the petition and would urge that the photograph shows that there are no two walls on tin sheet and it is only one wall of tin sheet.

5. *Per contra*, learned counsel for the Respondent invited the attention of this Court to the photographs annexed at page nos.179 of the petition. Perusal of the photographs at page No.179, clearly shows that these two walls of tin sheet and the tin sheet wall which is outward side has been directed to be removed. As such, the contention of the Respondent that there is only one tin sheet cannot be accepted. It is also pertinent to note that in event the Petitioner had constructed wall of tin sheet in the line of compound wall, there is no necessity for erecting the second wall on the outward side. As such, the order directing the Petitioner to

remove the second wall of tin sheet cannot be faulted with. The photographs on record show that an attempt has been made to encroach by setting up two tin sheet walls.

6. In such circumstances, the order passed by way of interim relief below Exh.79 cannot be faulted with.

7. For the reasons stated above, the writ petition devoid of merits and is accordingly dismissed.

(SHARMILA U. DESHMUKH, J.)