



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9711 OF 2023

Sau. Sunanda W/o Baburao Surve

Age : 46 years, Occ.: Household,
R/o : Govindnagar, Dhanora Road,
Tq. and District Beed.

...Petitioner

Versus

Bakubai W/o Ram Gujar,
Age : 65 years, Occ.: Household,
R/o : Govindnagar, Dhanora Road,
Tq. and District Beed.

...Respondent

Mr. D.S. Bagul h/f Mr. A.B. Girase, Advocate for the Petitioner.

Mr. A.L. Kanade, Advocate for Respondent.

CORAM : SHAILESH P. BRAHME, J.
RESERVED ON : 8th December, 2023
PRONOUNCED ON : 15th December, 2023

JUDGMENT :

. Rule.

2. Rule is made returnable forthwith. Heard, finally with
the consent of parties.

3. The petitioner is challenging concurrent finding of facts recorded against him for imposing injunction of not to carry out the construction to the extent of East-West 17 ft. and South-North 20 ft. of the suit property and from causing any obstruction to the possession of the respondent.

4. The petitioner is original defendant. The respondent has filed RCS No.689/2022 for perpetual and mandatory injunction contending that petitioner encroached on 17x20 sq. ft. of land of Survey No.181 situated at Govindnagar, Dhanora, Dist. Beed. The respondent claims to be the owner of the disputed portion and is in possession of it. Adjoining northern side plot belongs to him. The plot of the petitioner was belonging to one Puroshottam Deshpande who had sold it to vendor of the petitioner, Tolanbai Karande. Thereafter petitioner purchased it on 30.12.2020.

5. It is the case of the petitioner before the trial Court that she purchased property by registered sale deed which is of measuring 70 x 20 sq. ft. She secured permission for construction. The commencement certificate was issued on

03.04.2022. She is the owner of the plot and lawfully carrying out the construction. The respondent and the residence of the locality made complaints to the Chief Officer as well as police. Nothing illegal was found. Therefore the construction continued.

6. The respondent filed application Exhibit-5 for temporary injunction. It was contested by the petitioner. It was allowed by order dated 25.04.2023 by the learned 8th Joint, Senior Division, Beed. Being aggrieved, petitioner preferred MCA No.11/2003. Learned Counsel for the petitioner submits that both the Courts below failed to appreciate that the enquiry conducted by the Chief Officer and the police did not reflect encroachment. The petitioner purchased the plot by registered sale deed showing area of 70x20.

7. The learned Counsel for the petitioner would submit that after securing permission and the commencement certificate, the construction started by her. In 2012, there was no objection certificate issued by the respondent to the predecessor in title of the petitioner. Hence the respondent is stopped from objecting the construction. There is prima facie

evidence to show ownership of the plot, valid permission for construction by the Competent Authority and therefore the allegations of encroachment and the illegal construction have no substance.

8. Learned Counsel for the petitioner further submits that the trial Court virtually conducted mini-trial at the interlocutory stage. There are contentious issues which should have been dealt with after full-fledged trial. The petitioner claims to have invested huge amount and the construction is halted which is a irreparable loss. It is therefore submitted that the injunction should not have been granted.

9. Per contra, the learned Counsel for the respondent strongly opposed the submissions. According to him, both the Courts below have considered relevant material and arrived at plausible conclusion. Learned Counsel submits that the commencement letter does not disclose actual area of the construction. The respondent is in possession and owner of 'L' shaped area. The boundaries of the sale deed of the petitioner and boundaries of sale deed of predecessor in title do not correspond.

10. The learned Counsel submits that after full-fledged trial, the picture would be clear but prima facie there is evidence of encroachment against the petitioner. He would further submit that the petitioner has not placed on record the measurement or actual identification of the disputed area. Lastly it is submitted that the petitioner is an influential lady belonging to the political party and therefore she is getting support from the Officers of the Municipal Corporation for carrying illegal activities.

11. I have considered the rival submissions of the parties. The respondent has filed suit for perpetual and mandatory injunction. The petitioner purchased her plot by sale deed dated 30.12.2020 which indicates area of plot as 20x70 sq.ft. She has placed on record the commencement certificate issued by the Planning Authority. There is sanctioned plan of construction issued by the Competent Authority. Building permission issued by the Competent Authority disclosed plot area 130.11 sq.mtr. And the built up area 114.39 sq.mtr. Therefore I find substance in the contention of the learned Counsel for the petitioner.

12. When the respondent and other residents of the locality made complaint to the police and Chief Officer of the Municipal Council, inquiry was conducted and nothing illegal was found. The petitioner seeks reliance upon the communication dated 17.06.2022 and 23.06.2022 issued by the Chief Officer. Further reliance is placed on letter dated 04.07.2022 issued by the Police Inspector, Shivaji Nagar Police Station, Beed. These documents corroborate the claim of the petitioner. I find that both the Courts below have not considered this material in correct prospective.

13. There is nothing on record to indicate that the respondent is owner and in possession of disputed 17x20 sq.ft. of land which is alleged to be encroached. There is no prima facie material to show that the plot size of the respondent is 'L' shape comprising of 17x20 sq.ft. of area.

14. Though the learned trial Judge compared four boundaries appearing in the sale deed placed on record to come to conclusion that there is encroachment on the disputed area by the petitioner, it is unsafe to arrive at such a conclusion

without there being full-fledged trial. The material on record indicates that the petitioner is in possession and owner of adjacent plot of the respondent. I find that both the Courts below have committed perversity in clamping injunction against the petitioner. There is no prima facie evidence to hold that there is an encroachment and illegal construction.

15. The construction of the petitioner was underway when its halted by the order passed below Exhibit-5. The petitioner has to carry out the construction at her own peril and risk. If after full-fledged trial the suit is decreed then she will have to remove the encroachment and construction from area of 17x20. Considering the balance of convenience and irreparable loss I am of the view that no injunction is necessary when the petitioner is ready to run the risk.

16. For the reasons stated above, I find that the petition succeeds and order passed by both the Courts below are liable to be quashed. I, therefore, pass following order :

i. The order dated 25.01.2023 below Exhibit-5 passed in RCS No.689/2022 by 8th Joint Civil Judge, Junior Division, Beed

and the judgment and order dated 04.03.2022 passed by the learned District Judge, Beed in MCA No. 11/2023 are quashed and set aside.

ii. The application for temporary injunction at Exhibit-5 filed in RCS No.689/2022 is hereby rejected.

iii. The petitioner shall furnish an Undertaking that if the suit is decided against her then she will remove the encroachment and the construction at her own cost without claiming any equity.

iv. Rule is made absolute in above terms.

v. There shall be no order as to cost.

(SHAILESH P. BRAHME, J.)

Najeeb