

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

901 WRIT PETITION NO.10517 OF 2022

**MAHARASHTRA STATE ROAD DEVELOPMENT CORPORATION LTD.
VERSUS
SOMNATH SHAMRAO DHANNAYAT AND OTHERS**

...
Advocate for Petitioner : Mr. S.V. Adwant a/w. Mr. Harish Adwant &
Ms. Neha Kamble
AGP for Respondent – State : Mrs. G.L. Deshpande
Advocate for Respondent No.1 : Mr. K.B. Jadhav
...

CORAM : SHARMILA U. DESHMUKH, J.

DATE : 25-01-2023

PER COURT :

. The petitioner challenges the order dated 17.08.2022 passed in Misc. Civil Appeal No.20 of 2022 allowing the appeal filed by the respondent no.1, whereby the restraining order dated 04.03.2022 passed by the Trial Court against the Petitioner is restored and the order dated 04.07.2022 passed under Order 39 Rule 4 of Code of Civil Procedure, 1908 is set aside.

2. R.C.S. No.8 of 2022 came to be filed by the respondent no.1 seeking order of injunction as against the petitioner and respondent nos.2 to 5. The undisputed fact is that an area admeasuring 1-Hec, 36-R out of a total area of 2-Hec, 99-R of Gat No.37 came to be acquired by virtue of sale deed No 3199 of 2018

executed between the father of respondent no.1 and the petitioner. It is the case of the respondent no.1 that partition was effected between the father of Respondent No 1 and Respondent No 1 which is evidenced by Mutation Entry No.1193 dated 26.12.2019, whereby the remaining area of 1-Hec, 62-R came to be owned by respondent no.1 and the Petitioner being entitled to area of 1-Hec, 36-R is now seeking to encroach upon an area of 90-R. On 13.12.2021, the officers of respondent nos.2 to 4 had entered upon land of the respondent no.1 and threatened to dispossess him.

3. Armed with this case, the respondent no.1 approached the trial Court and instituted RCS No 8 of 2022, wherein an application was filed for injunction below Exh.5, in which the reply of Petitioner categorically stated that out of the land which was acquired by way of registered sale deed, an area to the extent of 0.79 R was given to the Indian Oil Corporation for setting up a petrol pump. Trial Court by order dated 04.03.2022 partly allowed the application for injunction and restrained the petitioner from carrying out any activity whatsoever in Gat No. 37 except in the land (area 1-Hector, 36-R) within the boundaries as specified and as mentioned in para no.2 of the sale deed (**Exh.32/1**). Subsequently, the petitioner became aware of the documents i.e. vatnipatra / agreement executed

between the father of respondent no.1 and respondent no.1 which was an unregistered, unstamped document executed on Rs 100 Stamp paper on the basis of which respondent no.1 claimed to be the owner of the property. Upon discovery of the *vatni patra* / agreement, an application under Order-XXXIX, Rule-4 of the Code of Civil Procedure was moved by the Petitioner, seeking to revisit the order of injunction dated 04.03.2022. The application proceeded on the basis as the said *vatni patra* / agreement was unregistered and unstamped document, which did not create any right in the respondent no.1 and no injunction could be granted in favour of Respondent No 1. By order dated 04.07.2022, the application was allowed and order dated 04.03.2022 below Exh 5 was set aside.

4. Misc. Civil Appeal No 20 of 2022 was preferred by the respondent no.1, which came to be allowed by order dated 17.08.2022 and the order passed below Exh.5 in R.C.S. No.8 of 2022 dated 04.03.2022 i.e. restraining the petitioner from carrying out any activity whatsoever in Gat No. 37 except in the land (area 1Hec, 36-R) within the boundaries as specified and as mentioned in para no.2 of the sale deed, is restored.

5. Both parties are aggrieved by the order dated

17.08.2022 passed in Misc. Civil Appeal No.20 of 2022. Petitioners are aggrieved by the findings of the Appellate Court construing the application filed under the provisions of Order-XXXIX, Rule-4 of the Code of Civil Procedure as review application ignoring that the petitioners sought revisiting of the order of injunction upon laying its hands on the *Vatni Patra*.

6. Respondents have not preferred any independent challenge to the impugned order but advanced submissions on the validity of the order of the Trial Court limiting the restrain order to the area of 1 H. 36 R. Learned counsel for the respondent no.1 submits that it is clear from the measurement and re-measurement carried out that the Petitioner is seeking to encroach upon an area beyond the area sold by the father of Respondent No 1 i.e. 1-Hec, 36-R. He would rely upon the report of the T.I.L.R. dated 27.09.2021 that upon re-measurement, as far as the land acquired from Gat No.39 is concerned, area of 0.4513 hector is increased and resultantly an area acquired from Gat no. 37 is to be considered reduced. He would further submit that as per the remeasurement the area 1-Hec, 62-R, which was remaining after the sale of 1 -Hec 36 R of Gut No 37 now stands reduced to 1 Hec 1 R and as such the reduced area has been encroached upon by the Petitioner for

construction of petrol pump.

7. Considering the nature of dispute being limited to measurement of the area, this Court by order dated 12.10.2022 directed the respondent no.4 to carry out the joint measurement in respect of the land admeasuring 1H 36R which measurement was placed before this Court. The report of the T.I.L.R. dated 03.01.2023 along with the map is produced on record. As per the map the area which has been acquired i.e. 1H, 36R land is shown bounded in orange colour boundary and the portion which is bounded by red portion is affected by the *Samruddhi Mahamarg*.

8. In the accompanying report, it is submitted that after the measurement of the area of 1-Hec, 36-R land, it appears that the land remaining in Gat No.37 is 1-Hec, 1-R which is the result of overwriting in the original records and as such after the land which is acquired remaining land is 1-Hec, 1-R. At this stage, this Court is required to consider whether the petitioner be permitted to carry on the activities in the land which is admittedly acquired under an agreement with the respondent no.1's father and in respect of which the boundaries are clearly stated in sale-deed which had been executed being registered sale deed no.3199 of 2018.

9. The whole dispute has erupted subsequent to complaint made by owner of Gut No 39, pursuant to which re-measurement of the areas was carried out, in which the Survey Officers reported that the area which was acquired out of Gat No.39 was much more than what was reported and consequently area which has been acquired from Gat No.37 ought to be considered reduced. The Survey Officers report states that as such, it appears that the Officers of the respondent nos. 2 to 4 and the petitioners are seeking to recover the excess amount of compensation which is being paid for acquisition of land of 1H, 36R.

10. The issue at present is limited to entitlement of the petitioners to carry on work in respect of 1H, 36R as per the sale deed which has been executed. The Petitioners have sought to assail the order of the Appellate Court passed in Misc. Civil Appeal No 20 of 2022, which in my view, rightly restored the order of Trial Court restraining the Petitioners from carrying out any activity beyond the area of 1 H 36 R of Gut No 37. The issue as regards the remaining area of Gat No 37, in which the Respondent No 1 claims ownership and which according to him have been reduced by reason of incorrect measurement and the issue as regards recovery of alleged excess

compensation paid, can be agitated by the parties at the appropriate stage.

11. Although the parties have argued at length and raised submissions as regards the measurement and re-measurement of the areas and the report of Survey Officers, the counsels for the parties have now conceded that the work can be permitted to be carried out as per the boundaries which have been set out in the sale-deed no.3199 of 2018.

12. Without going into the issue as to whether an application under Order-XXXIX, Rule-4 was necessitated in view of the fact that no prejudice was being caused to the petitioners inasmuch as the order dated 04.03.2022 permitted the petitioners to carry on the activities in the land area admeasuring 1H, 36R within the boundaries as specified and as mentioned in para-2 of the sale-deed, the undisputed position is that the petitioners have purchased an area of 1-Hec., 36-R out of Gat No.37 of which the boundaries are specified and mentioned in para-2 of the sale deed and it is within this area that the Petitioners can carry out their activities. Both parties agree that the order of the Trial Court dated 04.03.2022 can be restored.

13. On the basis of the registered sale deed executed, the Petitioner is entitled to carry out its activities only in respect of 1 H. 36 R out of Gut No 37 within the boundaries as specified and mentioned in paragraph 2 of the sale deed. Although I do not intend to interfere with the order of the Appellate Court in view of the consensus between the parties, in my opinion, the finding that the application is review application and is barred by law of limitation is clearly erroneous.

14. For the reasons stated above and in view of the consensus between the parties, there is no reason to interfere with the order of the Appellate Court dated 17.08.2022. It is clarified in the interest of both the parties that the petitioners are permitted to carry out their activities in Gat No.37 in the land area admeasuring 1-H., 36-R within the boundaries as specified and as mentioned in para no.2 of the sale-deed.

15. Needless to state that any observations made in this order is only for the purpose of determining the validity of the impugned order and the trial Court is permitted to proceed on its own without being influenced by the observations made herein.

16. Considering the issues which is involved, the trial of R.C.S. No. 8 of 2022 is expedited. The trial Court to decide and dispose of R.C.S No.8 of 2022 in any event before the expiry of one year from the date of this order.

(SHARMILA U. DESHMUKH, J.)

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