

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

WRIT PETITION NO.12094 OF 2021

**BHAGWAT FULCHAND BONDGE
VERSUS
THE COLLECTOR AND OTHERS**

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Advocate for Petitioners : Mr. Rajendrraa S. Deshmukkh, Sr.
Advocate a/w Mr Y. A. Mamde, Advocate i/b Mr. T.M. Venjane
AGP for Respondents – State : Ms. G.L. Deshpande
Advocate for Respondent No.4 : Mr. S.V. Adwant
Advocate for Intervener : Mr. S.B. Solanke

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 10th MARCH, 2023

PER COURT :

1. Petitioner by this petition filed under Article 227 of the Constitution of India, challenges order dated 25/10/2021, passed by learned District Judge-1, Nilanga in Misc. Civil Appeal No.05/2021 and the order dated 20/08/2021 passed by learned Joint Civil Judge, Senior Division, Nilanga, below Exhibit-5 in Regular Civil Suit No.113/2021.

2. Petitioner/plaintiff filed suit bearing R.C.S. No.113/2021 against respondents for perpetual injunction contending that he is owner and possessor of land Grampanchayat Property Nos. 2764/1 and 2764/2, ad-measuring 20 x 60 ft. each, which are adjacent to each other, situated at village Aurad Shahajani, Taluka Nilanga, District Latur. On the said property, petitioner has constructed two

storeyed complex consisting of shops and lodge. Work of construction of national highway is started on Nilanga Bidar Road, in front of the complex of petitioner. It is the case of petitioner that there is no bridge in front of the complex of petitioner, however, respondent authorities are going to construct bridge in front of his complex. He, therefore, filed the suit seeking permanent injunction against defendants/respondents that no unauthorized construction of bridge should be made in front of petitioner's complex.

3. Along with the suit, application Exhibit-5 seeking temporary injunction was filed. Defendants appeared and resisted the suit as well as temporary injunction application by filing written statement. Trial Court by the impugned order rejected the application Exhibit-5. Order of the trial Court was unsuccessfully challenged by the petitioner by filing Misc. Civil Appeal No.05/2021.

4. Heard learned senior advocate for petitioner, learned Additional Government Pleader for State, learned advocate for respondent No.4 and learned advocate for the intervener. Perused the grounds raised in the petition, documents placed on record and affidavit filed by the respective respondents.

5. Learned senior advocate assailed the order passed by trial Court as well as by the appellate Court, being contrary to the settled legal position under Order 39 Rule 1 and 2 of the Code of Civil Procedure. He submitted that the proposed bridge is sought to

be constructed by the respondents on a new site, in front of the complex of the petitioner which is sole earning source of the petitioner. By construction of proposed bridge, the running business of the petitioner will be affected. By trying to construct bridge by converting natural flow of water from the premises of the petitioner, the whole premises of the petitioner would be flooded with water. By relying upon the report dated 12/07/2021 of Village Development Officer, Gram Panchayat Office, Auradh (Sh.), Tq. Nilanga, Dist. Latur, submitted to the Sub-Divisional Officer, Nilanga, and report of the Tahsildar, Nilanga, dated 20/07/2021, submitted to the Collector, Latur, he submits that it is clearly stated in both the reports that due to construction of said bridge the water flow would be converted into the premises of the petitioner's complex due to which petitioner would suffer loss. Also, the natural flow of water is going to be stopped due to construction of the bridge. He, further relied upon the satellite map submitted by petitioner in support of his contentions. Further submission is that without following due procedure of law and acquisition of petitioner's property bridge is being constructed. He submits that both the Courts have ignored these aspects and have erroneously rejected temporary injunction application of petitioner. Both the impugned orders are, therefore, liable to be quashed and set aside and application Exhibit-5 filed by the petitioner may be allowed.

6. Learned Additional Government Pleader as well as learned advocate for respondent No.4, on the other hand, supported the impugned orders. Learned advocate for respondent No.4 has relied on section 41(ha) of the Specific Relief Act, in support of his submission.

7. The basic contention of petitioner that the bridge is being constructed in front of his complex, which ought to have been constructed at the place where the old bridge was located, itself is misconceived. 4th respondent in it's written statement has averred that:-

"The authorities of the State, concerned with the work, have commenced the work of construction of the new slab drain at location Km.2/430 where there was old dilapidated slab drain, which was in existence since years, as per the work contract approved by the authority of MoRTH, New Delhi".

"It is stated that the scope of the work has also been underlined in the work contract assigned to the contractor by the answering defendant, which includes the work of construction of slab drain of 2 span of 3.125 m each in place of old dilapidated slab drain of size 2 span of 3 m each at Km 2/430, thus the claim raised in the suit, is not worth consideration".

8. The trial Court as well as appellate Court have refused relief in favour of petitioner by relying on section 20A of the Specific Relief Act, which provides that:-

"No injunction shall be granted by a court in a suit under this Act involving a contract relating to an infrastructure project specified in the Schedule, where granting injunction would cause impediment or delay in the progress or completion of such infrastructure project."

9. Section 41 provides the cases where injunction is to be refused and clause (ha) provides that *"if it would impede or delay the progress or completion of any infrastructure project or interfere with the continued provision of relevant facility related thereto or services being the subject matter of such project"*. Said clause is applicable to the facts of the present case.

10. It cannot be disputed that the construction of slab drain of 2 span of 3.125 m each in place of old dilapidated slab drain of size 2 span of 3 m each, is infrastructure project. In view of sections 20A and 41(ha), both the Courts were right in rejecting relief to the petitioner.

11. Trial Court as well as the appellate Court have recorded concurrent finding of facts and have rightly interpreted legal provisions applicable to the facts of the present case. No case is made out by the petitioner to interfere in the concurrent decisions as there is no illegality or perversity in the orders impugned in the present petition.

12. Writ petition being devoid of merits is dismissed. Interim relief granted earlier stands vacated.

(NITIN B. SURYAWANSHI, J.)