

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

59 WRIT PETITION NO.10443 OF 2022

**GANESH KACHRU NIMROT AND OTHERS
VERSUS
RAJU RATANSING GOMLADU AND OTHERS**

...
Advocate for Petitioners : Mr. Shivprasad G. Jadhavar
AGP for Respondent – State : Mr. S.N. Morampalle
Advocate for Respondent No.1 : Mr. Ajit Gaikwad Patil
...

CORAM : SHARMILA U. DESHMUKH, J.

DATE : 14-02-2023

PER COURT :

. The petitioners have challenged the order dated 04.07.2022 passed by the Appellate Court in Misc. Civil Appeal No. 104 of 2022 thereby the petitioners' application for extension of *status quo* came to be rejected.

2. Misc. Civil Appeal No.104 of 2022 was filed against the order of the trial Court rejecting the petitioners' application for grant of *ex parte* temporary injunction below Exh.5. It is the case of the petitioner that the road is sought to be created from the land of the petitioners under the order of the Tahsildar dated 28.10.2001 and in event the respondents are permitted to execute the order of the Tahsildar, irreparable loss would be caused to the petitioners.

3. The Appellate Court by order dated 21.06.2022 issued notice to the respondents therein and passed an order of temporary injunction restraining the respondent no.4 from acting upon the notice duly served on the applicants on 05.05.2022 and 16.06.2022 till the next date. After an order of *ex parte* ad interim injunction was passed, it was the duty of the petitioners to comply with the procedure mandated under Order-XXXIX, Rule-3 and to deliver to the respondents a copy of the application for injunction along with all documents and to file on the day on which the such injunction is granted or on the day immediately following that day the affidavit stating that the copies aforesaid have been delivered or sent. In the present case, there was non-compliance of the Order-XXXIX, Rule-3 and subsequently on 04.07.2022 an application for extension of the order of *status quo* came to be filed which was rightly rejected by the Appellate Court.

4. Learned counsel appearing for the petitioners - appellants submits that by order of this Court dated 07.10.2022, the order of *status quo* passed by the Appellate Court on 21.06.2022 was continued till date and as the matter is now listed before the Appellate Court on 13.03.2023, the *status quo* be continued till that date.

5. The learned counsel for the respondents has vehemently opposed the application for extension of *status quo*. In support of his contention that no leniency ought to be shown to the party who has not complied with the mandate of Order XXXIX, Rule 3, reliance has been placed upon the following decisions:

- (i) **Sopan Maruti Thopte and another vs. Shaikh Abdul Aziz and others, AIR 1996 Bombay 304**
- (ii) **A. Venkatasubbiah Naidu vs. S. Chellappan and others, AIR 2000 SC 3032.**

6. Considered the rival submissions of the parties.

7. It is the settled position that in case of an *ex parte* ad interim injunction, the provisions of Order-XXXIX, Rule-3 are required to be strictly followed as the *ex parte* injunction prejudices the other side inasmuch as no opportunity of hearing had been granted before the grant of the *ex parte* injunction. In the present case, admittedly, there is a non-compliance of the mandate of Order-XXXIX, Rule-3. However, it needs to be noted that by order of this Court dated 07.10.2022 the *status quo* order passed by the district court was continued.

8. Considering the photograph which has been produced on

record, which shows that there is standing crop of sugarcane on the land in respect of which right of way is sought by the respondents, in my opinion as the order of status quo which has been continued from time to time, it will be in the interest of justice if the Appellate Court is directed to dispose of the application below Exh.5 in MCA No.104 of 2022 within a period of three weeks from today.

9. Needless to state that all rights and contentions of both the parties are kept open.

10. It also needs to be noted that the practice of obtaining *ex parte* ad interim injunction and not serving upon the other party and thereby continuing the order of *status quo* is required to be deprecated.

11. Writ petition is disposed of in the above terms.

12. The parties to appear before the District Court on 27.02.2023 with an application to list Misc. Civil Appeal No.104 of 2022 for hearing.

(SHARMILA U. DESHMUKH, J.)