

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

WRIT PETITION NO.1090 OF 2023

AVINASH PANDURANGRAO MORE AND OTHERS
VERSUS
MEGHRAJ PRAKASH MORE AND ANOTHER

...

Mr. A. N. Irpatgire, Advocate for the Petitioners.

Mr. R. B. Bagul, AGP for Respondents-State.

...

**CORAM : SHARMILA U. DESHMUKH, J.
DATED : 02nd FEBRUARY, 2023.**

PER COURT:-

1. Heard.

2. By this petition, the petitioners challenge the order dated 05.11.2022 passed by the Appellate Court below Exhibit 11, whereby the application of the respondents seeking police protection for constructing toilet in house no.258 admeasuring 45 X 31 feet in village Morewadi, Tal. Ambajogai, Dist. Beed came to be allowed.

3. The facts of this case are that RCS No.274/2012 was instituted by the petitioners for perpetual injunction against the respondents in respect of land Block No.559/C/3 admeasuring 74R of village Morewadi. Counter Suit came to be filed by respondent no.1 being RCS No.49/2013 seeking an order of perpetual injunction against the petitioners in respect of their property i.e. house no.258 admeasuring 45 X 31 feet.

4. Both the suits came to be decreed as against which appeals have been preferred by the petitioners and respondent

no.1 and same are pending. In the appeal preferred by the petitioners, respondent no.1 has moved an application seeking permission to construct toilet in his property bearing house no.258 admeasuring 45 X 31 feet.

5. Learned counsel for the petitioners submits that by virtue of this order, respondents are seeking to obstruct their possession over their property i.e. land bearing Block No.559/C/3 admeasuring 74R. He would further submit that this application could not have been preferred in the appeal which has been filed by the petitioners and if at all an application was required to be filed the same should have been filed in the appeal which has been preferred by the respondents. He would further submit that in appellate proceedings, the area of possession of Respondents has been disputed.

6. Considered the submissions of the learned counsel for the petitioners.

7. The Respondent No 1 seeks to construct a toilet within the house i.e. House No 258 and the contention of the petitioners as regards the area which is in possession of the Respondent No 1 can be decided independently at the time of hearing of the appeal. The properties in respect of which the perpetual injunction was claimed were separate and distinct in as much as the petitioners claim an order of perpetual injunction in respect of their property bearing land Block No.559/C/3 in respect of an area of 74R, whereas respondent no.1 claimed perpetual injunction in respect of his property being house no.258 admeasuring 45 X 31 feet. Pertinently the petitioners in their plaint have admitted that towards East side there is the house of defendant nos.1 to 9. An application has been filed seeking permission to construct the

toilet on the property which is owned by the defendants and the suit which was instituted by the petitioners did not seek the relief of declaration in respect of the property, which admittedly belongs to respondent no.1 and in respect of his own property a construction is sought to be made which in my opinion cannot be objected to by the petitioners.

8. As far as the contention of the learned counsel for the petitioners that in the guise of said application, the possession of the petitioners over this property might be disturbed, the Appellate Court has provided sufficient safeguards in the order dated 05.11.2020, wherein it has been mentioned that the toilet is permitted to be constructed on production of valid sanction from the Gram Panchayat after ascertaining the location is '***within house no.258***' and an undertaking is also called for by the Appellate Court that in event the appeal failed or the toilet is constructed beyond house no.258 admeasuring 45 X 31 feet, it shall be removed at its own cost. Considering the sufficient safeguards which have been provided by the Appellate Court, in my opinion the petitioners' apprehension is unfounded. As far as filing of the application in the petitioners' in the appeal is concerned, respondents have expressed an apprehension that an obstruction would be caused by the petitioners and for this reason the application has been preferred in the petitioners' appeal, which cannot be faulted with.

9. For the reasons above, there is no merit in the petition as what has been permitted is a construction of a toilet within the house of respondents for which the petitioners ought not to have any objection.

10. Writ Petition is devoid of merit and is accordingly dismissed.

(SHARMILA U. DESHMUKH)
JUDGE

Devendra/February-2023