

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO.15824 OF 2023
IN
APPEAL FROM ORDER NO.445 OF 2022

Bechar Raghavji Patel	...Applicant
<i>In the matter of</i>	
Bechar Raghavji Patel	...Appellant
vs.	
M/s. Mukul Developers and Others	...Respondents

Mr. Y.S.Jahagirdar, Senior Advocate a/w. Mr. Pratik Sabrad, Mr. Mallesh Chawadi i/b. V.V. Tapkir, for the Applicant.
Mr. Atul Damle, Senior Advocate a/w. Mr. P.B. Gujar, for the Respondents.

CORAM : N. J. JAMADAR, J.
DATE : OCTOBER 26, 2023

P.C.:

1. Heard the learned senior counsel for the parties.

2. This application is preferred seeking clarification of clause (vi) of the order dated 13th April, 2023 whereby while allowing the appeal preferred by the appellant/ defendant by setting aside the impugned order dated 21st February, 2022, this Court had remitted the application for temporary injunction (Exhibit 5) for afresh determination, after providing an effective opportunity of hearing to all the parties, including defendant No. 1 and till then, by way of

ad-interim order, defendant No. 2 and his agents and assigns were directed to maintain “status quo” in respect of the suit property.

3. Mr. Jahagirdar, the learned senior counsel for the appellants/defendants submitted that the said direction to maintain status quo is being misconstrued to mean that the defendant No. 2 has been restrained from carrying out further construction on the suit property and applications have been preferred on the strength of the aforesaid direction. Since the impugned order which this Court was persuaded to quash and set aside merely restrained defendant No. 2, his agents and assigns from carrying out excavation work at suit property, the direction to maintain status quo can not be construed beyond what was ordered by the trial Court, submitted Mr. Jahagirdar.

4. In opposition to this, Mr. Damle, learned senior counsel for the plaintiff/respondent, would urge that when the application for temporary injunction was preferred, there was only threat of carrying out excavation work and, at that stage also, it was not the case of the defendant that they were carrying out excavation work and, therefore, the trial Court had granted injunction to restrain the defendant No. 2 from carrying out the excavation work.

However, subsequently, defendant No. 2 claimed to have erected the structure. Since this Court in paragraph 12 of the order has adverted to the consequences of restraining the defendant No. 2 from carrying out excavation, the order of status quo deserves to be maintained till the application is finally decided by the trial Court, urged Mr. Damle.

5. I have perused the prayers in the application for temporary injunction. The prayers were restricted to restrain the defendant No. 2 from carrying out excavation work at the suit property and from making any encroachment over the suit property. By the impugned order also, the defendant No. 2 was restrained from carrying out the excavation work. It was the said order which this Court had quashed and set aside.

6. This Court ordered 'status quo' to ensure that the position which obtained as of the date the trial Court passed the order, was maintained. Since the respondent/plaintiff had not assailed the said order on the ground that it did not adequately protect the interest of the respondent/plaintiff or had not prayed for an injunctive relief to restrain the defendants from carrying out construction, the order of status quo can not be construed to mean restraint on the

defendants from carrying out further construction. In fact, the said issue was neither considered by the trial Court nor by this Court.

7. It is, therefore, clarified that the status quo would mean the defendant No. 2 and his assigns and agents are restrained from carrying out excavation work in terms of the order passed by the trial Court on 21st February, 2022.

Application disposed.

(N. J. JAMADAR, J.)