

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.9410 OF 2022

Bhamabai Rajaram Bhokse and ors ... Petitioners

vs.

Ramchandra Vishnu Habade ... Respondent

Ms. Gunjan Shah for the Petitioner.

Ms. Aditi S. Naikare for the Respondent.

CORAM : SANDEEP V. MARNE, J.

DATED : 23 JANUARY, 2023

P.C. :-

1. By this Petition, Petitioners challenge judgment and order dated 23 November 2021 passed by the District Judge-3, Khed-Rajgurunagar, District Pune, dismissing Petitioners' Miscellaneous Civil Appeal No.10 of 2021 and confirming the order dated 30 December 2020 passed by the trial Court below below Exh.5 granting temporary injunction against Petitioners/Defendants from making any construction and causing encroachment on road having width of 13 x 26 feet till the decision of the Suit.

2. Appearing for Petitioners, Ms. Shah, the learned counsel would contend that Petitioner is merely re-constructing her old house within the earlier boundaries and are not extended the scope of construction beyond the earlier boundaries. She would take me through the photographs of the earlier construction at page 158 of the paper book to demonstrate that

Petitioners are not making any construction beyond the boundary of the earlier house. Even though Petitioners were actually using some more space between house and road as bathroom thereby narrowing alleged access to the road to Defendant, Plaintiffs have restricted construction of new house to the boundary of old house by leaving open the space earlier used as bathroom. She would contend that the photographs would show that even when the earlier construction was standing, the defendant had a narrow access to his property and that Petitioners are maintaining the same width of access for the defendant.

3. Ms. Shah would invite my attention to the written-statement in which Petitioners relied upon the arrangement made between the Gram Panchayat and Vivid Karyakari Seva Sahkari Society Limited in which the Society agreed to leave access road of only three feet width. She would however submit that both the trial Court as well as lower Appellate Court erred in relying upon the solitary document in the form of the Assessment List pertaining to year 1984 and ignored the factual position existing at the site. Lastly, Ms. Shah would urge that Petitioner no.1 is a widow and running homeless on account of the impugned orders passed by the trial Court and lower Appellate Court.

4. *Per contra*, Ms. Naikare the learned counsel appearing for Respondent / plaintiff would oppose the Petition and support the orders passed by the trial Court and lower Appellate Court. She would invite my attention to the sale

deed by which the house property was purchased by Petitioners / predecessors in title, in which the width of road was described. She would place reliance on the assessment list showing width of road as 22 x 13. She would also place reliance on the notice issued by the Gram Panchayat to Petitioner No.1 calling her upon to stop construction. She would submit that despite issuance of such notice, Petitioners went ahead with the construction which is illegal.

5. I have heard the learned counsels for the parties. There is no dispute about nature of the access road in question, which is admittedly a public road. The existence of public road adjacent to the house property of Petitioners is not in dispute. The only disputes is about the width of the road. While Plaintiffs assert that width of road is 13 feet, it is the assertion of Plaintiffs / Respondents that width of road is only 8 feet.

6. There are two documents *prima facie* show the width of road. In the Assessment List of Gram Panchayat, the road is described as 22 x 13 feet. Thus, there appears to be some public record showing width of road as 13 feet. Additionally, the sale deed by which the property was purchased by Petitioners/ their predecessors show existence of road measuring 30 feet long at east-west side and 20 feet wide on south-north side. Thus, in the sale deed itself, Petitioners / their predecessors appear to have admitted the position that width of road is 20 feet. This appears to be little higher than width of 13 feet shown in the Grampanchayat records and as per the assertion made by Plaintiffs / Respondents. I do not

wish to go into the exact width of road at this stage. However, there are atleast two documents on record to demonstrate the width of road.

7. On the contrary, Petitioners/Defendants assert that the width of road is only 8 feet. However, this assertion is not borne out by any document on record. The trial Court is seized of the Suit in which the exact width of road would be determined after considering the contention and evidence of parties. Today Petitioners are carrying RCC construction which according to Plaintiffs / Respondents would narrow down width of road. The construction is of permanent nature. Considering these circumstances, trial Court and lower Appellate Court have arrived at a conclusion if the construction is allowed to progress further on the disputed road, the same would cause permanent obstruction to the public road. These are the considerations which have weighed in the minds of trial and lower Appellate Court while passing the impugned orders.

8. Considering the fact that there are atleast two documents on record showing the width of road as more than 8 feet, I do not find that any error is committed by the trial Court and lower Appellate Court in passing the impugned orders. At the same time, the construction of Petitioners is stalled on account of the impugned orders. However, the construction is stalled only in respect of the disputed road and there is no order of injunction for carrying the construction within the boundary of the house property of Petitioners.

However, considering the nature of construction, Petitioners are unable to go ahead with construction on account of the order of injunction order dated 30 December 2020 passed by the trial Court.

9. Considering the facts and circumstances of the case, ends of justice would meet if the trial Court decides the Suit in an expeditious manner. Accordingly, the following order is passed;

:: ORDER ::

(i) Order passed by Trial Court and lower Appellate Court are upheld.

(ii) The trial Court is however requested to expedite the hearing of Regular Civil Suit No.241 of 2020 and to make an endeavor to decide the same as expeditiously as possible preferably within a period of one year from today.

(iii) Both parties to the Suit to cooperate with the trial Court for expeditious disposal of the Suit.

10. In view of the above, the Writ Petition is accordingly disposed of.

(SANDEEP V. MARNE, J.)