

R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 255 OF 2023

Mohan Mahadev Mali

.. Petitioner

Versus

The Chief Officer,
Uran Nagarpalika Parishad,
Taluka Uran, Dist. Raigad & Ors.

.. Respondents

.....

- Mr. Ashok S. Pandire, Advocate appointed for Petitioner

.....

CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 10, 2023

P.C.:

1. Heard Mr. Pandire, learned Advocate appointed by High Court Legal Services Committee, Mumbai to represent the Petitioner.

2. At the outset, this Court expresses its anguish for appointing Advocate to represent the Petitioner in the facts and circumstances of the present case. The Secretary, High Court Legal Services Committee, Mumbai is directed to take cognizance of this order.

3. Present Petition takes exception to the order dated 10.11.2021 passed below Exh. 132 in R.C.S. No. 27/2005. Admittedly, the entire trial in the case is almost complete save and except the final arguments which were slated on 11.01.2017. It is required to be noted that Petitioner is the owner of one structure described as constructed house (Tapari) No. 2334 and 10 handcarts which have been placed by the Petitioner in front and around of the said structure on a public road going towards Uran ST stand. Record indicates that

it is a hindrance to the general public at large. Admittedly, the said road is standing in the ownership of Uran Nagarpalika Parishad and the Petitioner has miserably failed to obtain any ad-interim / interim orders in the suit which is being prosecuted by him since 2005. Only when the suit was to be heard finally, that the Petitioner has moved the Application on 20.07.2019. Perusal of the Application which is at Exh. 'C' (Page 33) of the Petition reveals that a futile attempt is belatedly made by Petitioner to protract and delay the hearing of the pending suit. Perusal of Application and re-casted issues proposed and now suggested by Petitioner would reveal that Petitioner now wants the entire burden of proof to be shifted on the Defendants to prove that the road passing in front of the suit property wherein Petitioner's structure and 10 handcarts are stationed belongs to Respondent No. 1 - Uran Nagarpalika Parishad. This is now prayed for by the Petitioner at this belated stage after the entire evidence is over. Respondent No. 1 resisted the Application below Exh. 32 by filing its say on 06.03.2021. After considering the pleadings, the learned Trial Court has returned the findings on the above facts which need to be noted here. Paragraph Nos. 2 and 3 of the order read thus:-

"2. The defendant has resisted the application by filing his say. According to him, the contents in application are totally false. After framing of issues the plaintiff has adduced his evidence and gave evidence close pursis at Exh. 98 on dt. 06.10.2015. After that defendant lead his evidence and at Exh. 118 gave evidence close pursis on 14.11.2016. After that, matter is adjourned for final argument on 11.01.2017. And in the year 20.07.2019 plaintiff had file application for addition issue. This application is

filed with oblique motive to prolong the matter. The application is devoid of merits. Hence prayed to reject the application.

3. *The plaintiff has filed this suit for declaration and injunction. So far as the proposed issues are concerned though plaintiff has encroached on east side of road going towards Uran S.T. Stand due to which there was obstacle to the traffic and further he pleaded that, road going toward Uran S.T. Stand is owned by Uran Nagar Parishad. All the proposed issues are not necessary because all the facts specifically asserted by the defendant will be discussed in the issue of the entitlement of plaintiff for injunction. However, I do not find that proposed issues are necessary for proper adjudication of the dispute between the parties. Hence, I proceed to pass the following order:-*

Order

1. *Application is rejected.”*

4. It is seen that the Application filed by Petitioner is one more frivolous attempt to protract and delay the decision in the suit with an oblique motive. Considering that the Petitioner has placed 10 handcarts on which the learned Advocate is not able to give any further details, Petitioner must be earning substantially. Despite that the Petitioner has sought legal aid to challenge the impugned order. Record has been shown to me by the Secretary of the Legal Aid Committee. Petitioner has been issued an income certificate by the Tahsildar stating that he is earning Rs.40,000/- per annum. Hence, legal aid is provided to him. This is a one line certificate issued in favour of Petitioner on the basis of Talathi report (which is not on record).

5. Though Mr. Pandire, learned appointed Advocate has done his duty of filing the Petition and argued the same, it needs to be noted that the facts are different than what meets the eye. Pleadings in the petition clearly reveal that Petitioner has constructed a

farmhouse with the permission of the local Grampanchayat being House No. 2334 which is not the planning authority and is in the business of selling clothes and fruits on the 10 handcarts in the entire compound built around the said farmhouse on the public road. Hence it is unfathomable that Petitioner's income would be Rs.40,000/- per annum i.e Rs.3,333/- per month. The income certificate is therefore questionable. This shows that the Petitioner has clearly has adequate means to pay for the litigation costs. Petitioner does not deserve to be provided legal aid. The trial in the present case before the learned Trial Court is at the stage of final arguments. The road admittedly belongs to the Nagarpalika road, which goes towards Uran ST Stand and is used by the general public. I entirely agree with the findings returned by the Trial Court which are alluded to hereinabove. The order of the Trial Court does not call for any interference. Application for recasting the issue at this stage and the proposed issues would completely change the nature of the suit and cannot be permitted. Writ Petition thus fails.

6. In view of the above facts which are noted, Petitioner does not deserve appointment of Advocate through legal aid. The order passed by the learned Trial Court is sustained. Hence, the following order is passed:-

- (i) Writ Petition is dismissed with costs of Rs. 20,000/- to be paid by the Petitioner – Mohan Mahadeo Mali to the

Kirtikar Law Library, High Court, Mumbai which is to be paid within a period of two weeks from today and receipt of the same be produced on the record of this Petition;

- (ii) If the costs are not paid as directed above, the Collector, Raigad / Mumbai is directed to recover the said costs from the Petitioner as arrears of land revenue;
- (iii) Fees paid to Mr. Ashok Pandire, learned Advocate appointed to represent the Petitioner shall be recovered by the High Court Legal Services Committee, Mumbai from the Petitioner and if not paid be recovered as arrears of land revenue through Collector, Raigad.
- (iv) Trial Court is directed to expedite hearing of the suit proceeding and complete the final arguments and give its decision within a period of six weeks from today without adjourning the matter unless it is utmost necessary.

7. Copy of this order be forwarded to the Secretary, High Court Legal Service Committee.

8. Writ Petition is disposed.

[MILIND N. JADHAV, J.]