

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12279 OF 2022

Sheetal Sahil Panchala & Ors.

...Petitioners.

Versus

Nisarg Vihar CHS Federation Ltd.

& Ors .

...Respondents.

Mr. Nikhil B Waje for the petitioner.

Mr. Sandeep Mishra for respondent No.1 to 7.

Mr. Sandeep Bas for respondent No.8.

Coram : Sharmila U. Deshmukh, J.

Date : June 19, 2023.

P. C. :

1. By this petition, the challenge is to the order dated 19th September 2022 passed by the learned District Judge, Kalyan in Miscellaneous Civil Appeal No.78 of 2022 whereby the order dated 1st June 2022 passed by the trial Court below Exhibit-5 in Regular Civil Suit No. 288 of 2021 came to be reversed.

2. The factual matrix is as under :

[A] The petitioner claims to have acquired the property bearing Survey No.23, Hissa No.3 and is stated to have commenced construction

thereon. It is not disputed that the property has been acquired pursuant to the development agreement, which has been executed in the year 2017. Prior to the execution of development agreement, there was no structure standing on the said plot of land. Respondent Nos.1 to 7, which is the federation of the co-operative housing societies, has its structures on land bearing Survey No.23 (part) as well as Survey No.24.

[B] The petitioner claims to have access to their land only through the land admittedly belonging to respondent Nos.1 to 7 and, as such, their property being land-locked, the petitioner filed complaints before respondent No.8– Kulgaon Badlapur Municipal Council.

[C] Based on the complaints of petitioner, notices dated 25th September 2019 and 13th November 2019 were issued by respondent No.8-municipal council. By the said notices, respondent Nos.1 to 7 were directed to open the iron gate, which was installed by them thereby preventing access of the petitioners to their land bearing Survey No.23. As there was no response to the said notices issued by respondent No.8, on 20th November 2018, respondent No.8-municipal council demolished the iron gate which was installed by respondent Nos.1 to 7.

[D] The suit came to be filed by respondent Nos.1 to 7 challenging the notices dated 25th September 2019 and 13th November 2019 issued by the municipal council in which respondent No.1 to 7's application for injunction came to be rejected. In spite of the rejection of their application for injunction, respondent Nos.1 to 7 once again reconstructed the gate, which led to the filing of police complaints by the petitioner on 20th September 2021.

[E] As the petitioners access was obstructed due to the reconstruction of iron gate, suit being RCS No.288 of 2000 came to be filed by the petitioners in which the application seeking direction to respondent Nos.1 to 7 to permit the petitioners access to their property came to be allowed by the trial Court vide order dated 1st June 2022, which came to be reversed by the appellate Court.

3. Heard Mr. Nikhil B Waje, learned counsel for the petitioner, Mr. Sandeep Mishra, learned counsel for respondent Nos.1 to 7 and Mr. Sandeep Bas, learned counsel for respondent No.8.

4. Learned counsel for the petitioner submits that the property in question is a land-locked plot and the only access to their property is through the land of respondent Nos.1 to 7. He points out the finding of

the trial Court in the application at Exhibit-5 wherein the trial Court based on the notices which have been issued by the municipal council, has come to a finding that the road in question is a public road and in spite of the direction of municipal council, respondent Nos.1 to 7 have obstructed access of the petitioner. He further submits that subsequent to the order of trial Court, the plans of petitioner for construction were sanctioned by the municipal council. He submits that the development plan of the municipal council, which is annexed at page 240 of the paper book, shows that the only access to the subject plot is through the property of respondent Nos.1 to 7. He further points out the reply of respondent No.8 wherein it is stated that the said road is kept for the public purpose and respondent Nos.1 to 7 were obstructing the same. He would urge that the grounds on which the findings of trial Court have been reversed by the District Court are that there is no pleadings as far as the use of road is concerned, no hand-sketch map showing the exact road approaching the suit property is annexed and, thirdly the privacy of the members is likely to be disturbed if the access road is granted.

5. *Per contra*, learned counsel for respondent Nos.1 to 7 submits that it is undisputed that the property is the private property of

respondent Nos.1 to 7 and that being so, without acquiring the property in question, the access could not have been granted by the trial Court. He supports the finding of the appellate Court and submits that there are no pleadings as to the use of access by petitioner through the property of respondent Nos.1 to 7 and there is no pleading to the effect that the property is land-locked property and that the only access to the property is through the private property of respondent Nos.1 to 7.

6. Learned counsel for respondent No.8 submits that as per the sanctioned plan, the said road is kept for public purpose and, as such, based on the sanctioned plan, notices came to be issued and subsequent the action of demolition of the gate was taken. He supports the order of the trial Court and opposes the petition.

7. I have considered the rival submissions of the parties and perused the proceedings with the assistance of learned counsel for the parties. Perusal of the order of the appellate Court indicates that the district Court has considered the pleadings in the suit filed by the petitioner as regards the exclusive use. It has further considered that even if the road is described as a public road, the pleading are not supported by the copy of sanctioned development plan of municipal

council and merely be mentioning the same in the notices, the council cannot declare the road as a public road unless the road is acquired by following the due process of law or the road is constructed from the funds of council.

8. On the other hand, perusal of the order of trial Court indicates that the trial Court has granted injunction based on the notices which have been issued by the municipal council, without taking into consideration the fact that property of the respondents, i.e., Survey No. 23(part) and Survey No. 24, is the private property of respondents. In such event, if any access is sought by the petitioner, it is for the municipal council to adopt necessary procedure and acquire the plots in question in accordance with the Unified Development Control and Promotion Regulations for Maharashtra State and in particular Clause 3.3.14 thereof which deals with the position of land-locked plot and provides that in case of a plot surrounded on all sides by other plots or reservation, has no access to any street or road, the Authority may require access through the adjoining plot to the land-locked plot at the cost of owner of the land-locked plot and such other conditions as the Authority may specify.

9. Learned counsel for the petitioner or learned counsel appearing

for respondent No.8–municipal council has not demonstrated that such procedure was adopted by the municipal council before demolition of the iron gate installed by respondent Nos.1 to 7. It appears that only on the basis of sanctioned plan of petitioner, without taking into consideration the procedure prescribed under the Unified Development Control and Promotion Regulations for Maharashtra State, the municipal council acting at the instance of petitioner, has demolished the iron gate and permitted the access to the petitioner through the private property of respondent Nos.1 to 7. In my opinion, such a course of action is not permissible to be adopted by the council and it was necessary to follow the due process of law. In the present case, I do not find such procedure has been followed by the council. It is required to be considered that ultimate decision of the proceedings will affect the rights of the third party who would be put in possession after the development has been carried out.

10. The order of the trial Court appears to proceed on the basis of the notices issued by the municipal council, whereas the District Court has rightly taken into consideration the pleadings in question. For the purpose of seeking interim injunction, it was necessary for the petitioner to place on record necessary pleadings to the effect that the plot in

question is a land-locked; that the land-locked plot has been acquired as per the prescribed procedure under the Unified Development Control and Promotion Regulations for Maharashtra State and the said land-locked plot was in use of the petitioners or their predecessor-in-title as an access road for long period of time. No such pleadings appears to be on record. For the purpose of grant of injunction, there is a necessity of a finding of a *prima facie* case, the balance of convenience and irreparable loss.

11. In the present case, in my opinion, considering the case of petitioner, it fails to make out a *prima facie* case as they were not shown to be using the access road prior to the year 2017 and, the balance of convenience is in favour of respondent Nos.1 to 7 since the property in question is the private property of respondents. In my view, grave prejudice and irreparable loss will be caused to the respondents if the the petitioners are permitted to use the private property of respondents as a public road without following due process of law. In that view of the matter, there is no reason for interference with the well reasoned order passed by the District Court. Writ petition stands dismissed.

[Sharmila U. Deshmukh, J.]