



THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

WRIT PETITION NO. 496 OF 2024

1. Spy Developers Builders & Suppliers
A Partnership firm through its partners

1a) Shrikant Shankar Chhindam,
Age: 45 years, Occu.: Business,
R/o. Mohanbag, Delhigate,
Ahmednagar, Dist. Ahmednagar.

1b) Shripad Shankar Chhindam,
Age: 40 years, Occu.: Business,
R/o. Mohanbag, Delhigate,
Ahmednagar, Dist. Ahmednagar.

... Petitioners
(Orig. Defendant No.1)

VERSUS

1. Ahmednagar Education Society,
Ahmednagar for & on behalf of it
Smt. Chhaya Ashok Firodiya,
Age: 73 years, Occ.: Business,
R/o. In front of D.S.P. Office,
Aurangabad Road, Ahmednagar,
Dist. Ahmednagar.

(Org. Plaintiff)

2. Kamlakar Sahebrao Patil
Age: 59 years, Occ.: Business,
R/o.12, Mayur Colony,
Nr. Swamini Test Tube Baby,
Indira Garden, Dhule-424 002.

3. Umesh Savaleram Datrange
Age: 45 years, Occ.: Business,
R/o.H.No.538/A, Sinhagad Road,
Pune 411 009.

4. Harshavardhan Vilas Satbhai
Age: 36 years, Occ.: Business,
R/o.503, Nandadeep, In front of
Patrakarnagar, Senapati Bapat
Road, Pune - 411 016.
5. Vihvavardhan Vilas Satbhai
Age: 33 years, Occ.: Business,
R/o.503, Nandadeep, Patrakarnagar,
Senapati Bapat Road, Pune.
6. Bhairavi Bharat Satbhai
Age: 60 years, Occ.: Business,
R/o.D-10, Saket Apartment,
Patwardhan Bag, Karvenagar,
Nr. Tennis Court, Pune - 411 052.
7. Vikaramaditya Sanjay Satbhai
Age: 33 years, Occ.: Business,
R/o. Ganpati Chowk, Kapad Bazar,
Kopargaon, Tal. Kopargaon,
Dist. Ahmednagar.

... Respondents

(Res.No.1 Org. Plaintiff &
Res. Nos.2 to 7 are Org. Defendant Nos.2 to 7)

...

Mr. N. V. Gaware & Mr. S. P. Salgar, Advocate for Petitioners.

Mr. Ajit M. Gholap, Advocate for Respondent No.1.

...

CORAM : KISHORE C. SANT, J.

RESERVED ON : 8th October, 2024.

PRONOUNCED ON : 17th December, 2024.

J U D G M E N T :-

. The petitioner/original defendant has approached this Court challenging the order dated 28th December, 2023 passed by the learned District Judge-1, Ahmednagar in Miscellaneous Civil Appeal No.108 of 2023, allowing the appeal of the plaintiff. By allowing the appeal, he set aside the order passed by learned 16th Joint Civil Judge, Senior Division, Ahmednagar on an application below Exhibit-5 in Regular Civil Suit No.438 of 2023. The learned 16th Joint Civil Judge, Senior Division, by way of order impugned in the Miscellaneous Civil Appeal, had rejected the application of the plaintiff and vacated the order of *status-quo* passed earlier. The Appellate Court allowed the application Exhibit-5 of the plaintiff.

2 The facts in short giving rise to the present writ petition are as under:-

The plaintiff is an education society, which runs a school. Original defendant No.1 is the entity involved in the business of developing properties. Defendant Nos.2 to 7 are the persons, who are alleged to have encroached or trying to encroach upon the land of the plaintiff. It is the case of the plaintiff that the plaintiff was given land on lease by the original owner of the property namely Vasantrao Satbhai in the year 1951 on monthly lease. Since then, the plaintiff

runs the school and the office on the suit land. The plaintiff also started one D.Ed. College. The original owner Vasantrya thereafter, partitioned the land in his sons. Defendant Nos.4 to 7 are the grandchildren of Vasantrya. The sons of Vasantrya on getting separate possession of their respective shares in the property, executed sale-deeds in favour of various persons. In those sale-deeds, there is also a mention of the land in possession of the plaintiff. On 28th March 2023, the defendants executed a sale-deed even of the land in possession of the plaintiff. Thereafter, even permission is sought from the Town Planning Department for construction. The plaintiff has lodged complaint with the office of Deputy Superintendent of Land Records and also in the Municipal Corporation, Ahmednagar. It is alleged that now the defendants have started demolition work and are now trying to construct a building on the land. Though it was obstructed by the plaintiff, no heed is paid. On these facts, the plaintiff filed a suit for declaration that the plaintiff is a tenant in the suit premises. Injunction was prayed against the defendants from disturbing the peaceful possession and not to change the nature of the suit property. Further relief is claimed of *status-quo ante*.

given proper description of the property. The description is vague and incomplete. The defendants denied the contents of the plaint. It is stated that the suit is not maintainable, as the plaintiff has suppressed various facts. There is no pleading as to how the plaintiff has acquired right in the suit property. No sufficient documentary proof is on the record. The boundaries of the suit property are not mentioned. There is violation of Order VII Rule 3 of the Code of Civil Procedure. The so-called lease-deed is not registered. The alleged lease-deed is more than 11 months old, still it is not registered though it requires compulsory registration. The property of Vasantrao was partitioned even prior to 1970. As per the said partition, the property to the extent of 1358.80 square meter was given to his sons and daughter. The said property of Ashutosh Landge was purchased by the partners of defendant No.1. Some more transactions are shown in the written statement. It is further case that after these transactions, defendant No.1 got the land converted to N.A.. There is also a permission granted by the Collector by order dated 11th April, 2023 for the area of 2284.03 square meter. A construction permission was also sought. The Municipal Corporation only after verifying those documents allowed a layout plan by order dated 27th March, 2023. Thereafter, again some changes were made in the construction permission.

4 It is further case that even earlier suit was filed bearing Regular Civil Suit No.525 of 2013 for easementary right of the road from the suit land of 180 feet having width of 20 feet. The owner of some portion had also filed a suit bearing Special Civil Suit No.113 of 2016. There also an injunction was prayed for. However, the said injunction was not granted by the Court. It is thus, the case that the plaintiff has no right over the property which is purchased by defendant No.1.

5 The plaintiff also filed an application below Exhibit-5 for injunction. The learned Civil Judge, Junior Division observed that the property details are not mentioned in the alleged agreement of 1951. No exact area is mentioned. The documents relied upon were electricity bills, letters exchanged between the landlord and tenants. It is held that from the documents on record, it is not clear in which portion of the property the plaintiff is in possession. There is nothing to show that there is construction of bungalows on the suit property. There is no record from the Municipal Corporation to show the existence of such bungalows. It is held that the plaintiff is in possession of suit property 1B only. The Court also considered the photographs. It is ultimately held that the plaintiff has failed to establish that on the site any construction is going on and rejected

Exhibit-5 application.

6 In appeal, the learned District Judge allowed Miscellaneous Civil Appeal holding that the injunction ought to have been granted in respect of the building of the D.Ed. college. The injunction is granted only against defendant Nos.1a and 1b i.e. present petitioners from demolishing the suit property described in plaint para-1B and they are restrained from making further construction in any part of the suit premises described in plaint para-1A.

7 It is against this order, original defendant No.1 has approached this Court. Mr. Gaware, learned counsel for the petitioners submitted that the learned Trial Court had rightly passed an order. The plaintiff failed to show that it is in possession of the entire property. The lease-deed between the original owner and the plaintiff is of 13th July, 1951 that was only for 15 years. There is nothing to indicate that the said lease period was extended thereafter. The said lease was terminated by notice dated 20th March 1992 by the original landlord / respondent Nos.2 to 7. The learned Appellate Judge has disturbed the order passed by the Trial Court by using its discretion. The plaintiff has no concern with the property mentioned in

paragraph 1 of the plaint. *Prima-facie* the suit is not maintainable for not filing on the record a map as required by Order VII Rule 3 of the Code of Civil Procedure. Since the facts are suppressed by the plaintiff, it is not entitled to any equitable relief. It is thus, prayed that the order passed by the learned District Judge in Miscellaneous Civil Appeal be quashed and set aside by allowing the writ petition.

8 Mr. A. M. Gholap, learned counsel for respondent No.1 vehemently opposes the petition. He submits that the plaintiff is in possession of entire suit land since 1951. That fact is not denied and disputed. The plaintiff has continued to pay rent of the land to the owners. Acceptance of rent even after lease period is over shows that the lease is continued. The Trial Court had failed to consider that the plaintiff is in possession of the entire land and rejected the application Exhibit-5. There is *prima-facie* case and the balance of convenience is in favour of the plaintiff as rightly held by the learned District Judge. Now, the construction is going on at the hands of the petitioners. If it is allowed to continue, it will cause irreparable loss. Thus, on all the three counts, the plaintiff has a better case and therefore, it is rightly held by the Trial Court that stay needs to be granted. He, thus, prays for dismissal of the writ petition.

9 Heard the learned counsels for the parties.

10 This Court has to consider as to whether a case is made out by the petitioners calling for interference in the order passed by the learned District Judge-1, Ahmednagar. Whether the plaintiff has shown *prima-facie* case for grant of interim relief? To consider the above aspects, this Court needs to see what is the right of the plaintiff. As per the submissions of the petitioners, the lease was for 15 years and the same expired in 1965. There is nothing on record to show that any attempt was made to get the said lease extended. In fact, there is notice issued by one of the owners terminating the lease-deed by notice dated 20th March, 1992. If the lease-deed / agreement of 1951 is seen, there is no specific boundaries mentioned. The lease-deed is for 15 years. The lease-deed was for newly constructed 12 class rooms each of 20 feet x 20 feet with a Verandah of 6 feet. The landlord has to provide urinals and four latrines and a cement cistern for storage of water with a 3/4 pipe connection having six taps distributed on different sides for the use of students. The landlord has to provide a suitable barbed wire fencing around the school building to be constructed. The landlord has to lease out his vacant agricultural farm admeasuring about two acres adjoining the school building. From this agreement, it does appear that there is no specific

boundaries and exact area is mentioned. Considering that Vasantrao was having large property, it is clear that the entire land of Vasantrao was not given on lease to the plaintiff.

11 Dealing with the aspect of notice dated 20th March, 1992, it is seen that a notice was given to the plaintiff that from 1st April, 1989 till 31st March, 1990, the rent of Rs.2100/- was not paid alongwith education cess etc. and notice was issued for termination of tenancy / lease. By way of notice, rent was directed to be paid alongwith interest. However, nothing further seems to have been done in furtherance of this notice. This Court finds that this may also not lead to any conclusion right now at this *prima-facie* stage. From the photographs on record, it is shown that the construction is on one side of the road, whereas the existing structure of the school is on the other side of the road. There is also an affidavit undertaking on record given by the petitioners that the petitioners shall not make any construction on the portion on which presently the school and college are being run.

12 It is further submitted that there is a sale-deed in respect of the land on which the present construction is going on. The said sale-deed is dated 14th May, 2021 and the same is not under

challenge in the plaint. The said sale-deed is executed by Ashutosh Landge, who had purchased the land from one of the Satbhais. Without challenging the sale-deed, a suit is filed. This needs to be considered. There is further sale-deed of some portion of the land from Umesh Datrange one of the defendants, even that is not under challenge. In the said sale-deed also it is clearly mentioned that the possession is handed over to defendant No.1. Now, there is a development agreement that has taken place between defendant No.1 and other defendants. By way of sale-deed dated 28th March 2023, three sons of Vasantrao have executed sale-deed in respect of land that has come to their share to defendant No.1. There is also N.A. permission granted in respect of land on which presently the construction is going on. Corporation has also issued a commencement certificate on 27th March, 2023. This Court finds substance in the argument that the authorities have verified the title of the land and it is only thereafter, the permissions are granted. When all these things were going on, the plaintiff did not file any suit. The plaintiff has filed a suit in August, 2023 only after restarting of the construction.

13 After filing of the miscellaneous civil application, it is seen that the plaintiff deleted all other respondents i.e. original defendant

Nos.2 to 7 and proceeded only against the present petitioners. The other defendants are the owners of the land from whom the development rights are taken by the petitioner. Thus, this Court finds substance in the submission that in absence of the owners of the land, the plaintiff is only proceeding against defendant No.1. There is no reference of the bungalow in the sale-deed, though it is alleged by the plaintiff that the possession of bungalow is also given. The property is clearly distinguishable in possession of the plaintiff and defendant No.1.

14 Further submission on the basis of Order VII Rule 3 of C.P.C., this Court finds that no such map is on record showing the exact encroachment on the land of the plaintiff, which was material. There is also a reference to earlier suit i.e. Special Civil Suit No.113 of 2016 in the written statement filed by the present petitioners. In the said suit, a decree was passed. In the said suit, the present suit property was claimed. However, the relief was refused by the said Court. In the said suit, it is clearly held that the possession of the suit land is with defendant No.1. The Trial Court has rightly considered all these aspects. A statement is also considered that the petitioner has already given an undertaking that he will not touch the property 1B which is in possession of the plaintiff. From the order of the Appellate

Court, it is seen that the Court has re-appreciated the evidence at this stage. It is on this background, the learned counsel for the petitioners also submitted that in view of the undertaking that the petitioners will not touch the property 1B and also that he will make construction at his own risk and will not claim any equity.

15 So far as case of the plaintiff is concerned, it is seen from record that the plaintiff is put in possession long back in 1951 and there is no dispute. The question is only about the portion of land in possession of the plaintiff. While examining this aspect, it is clear from the lease-deed of 1951 what is mentioned is 12 class rooms each of 20 feet x 20 feet with a Verandah of 6 feet and some land for the office. Further reference is to urinals and four latrines is also there. So far as open land is concerned, the same is approximately two acres. However, no details of the measurement of the land leased to the plaintiff are appearing. Even in the suit, no map is produced as required under Order VII Rule 3 of C.P.C.. There is no specific statement coming from the plaintiff that the portion 1A is in possession of the plaintiff. From the photographs on record, it appears that there is road of 20 feet width in between property 1A and property 1B. The present construction is going on in property 1A. Already an undertaking is given that the petitioners will not make any

construction on the property 1B. Now, the construction of almost seven storey is completed. It is, thus, clear that presently the plaintiff is not in possession of the portion on which the construction has already started. Grant of N.A. permission and commencement certificate by the authorities would also, *prima-facie*, show that the authorities are satisfied of the possession of the defendants on the portion of land. It is also clear from the record that the original owner Vasantrao had partitioned the land amongst his sons namely, Jayant, Vilas, Bharat and others. The land has changed the hands of subsequent purchasers. Accepting the case of the plaintiff that there is a lease-deed in it's favour and it still continues, it is in respect of property 1B. Though the plaintiff has come with the case that there is bungalow, there is no reference of said bungalow in any official record. The fact of existence of bungalow is thus doubtful.

16 Thus, considering all these things, this Court has to see the judgments relied upon by the parties.

17 The learned counsel for the petitioners relied upon the following judgment:-

- i) ***Corporation of Calicut Vs. K. Sreenivasan, (2002) 5 Supreme Court Cases 361;***

- ii) ***Wander Ltd. and another Vs. Antox India P. Ltd.,
1990 (Supp) Supreme Court Cases 727;***
- iii) ***Skyline Education Institute (India) Private Limited
Vs. S.L. Vaswani and another,
(2010) 2 Supreme Court Cases 142;***
- iv) ***Kashi Math Samsthan and another Vs. Shrimad
Sudhindra Thirtha Swamy and another,
(2010) 1 Supreme Court Cases 689;***
- v) ***Dalpat Kumar and another Vs. Prahlad Singh and
others,
(1992) 1 Supreme Court Cases 719;***
- vi) ***Jennifer Mascarenhas and another Vs. Jose
Antonio Domnic Dias and another,
2015(6) Mh.L.J. 680.***

18 In the case of ***Corporation of Calicut Vs. K. Sreenivasan*** (supra), the question was in respect of eviction of unauthorised occupants from the public premises. The Honourable Apex Court considered and distinguished the licence and lease.

19 In the case of ***Wander Ltd. and another Vs. Antox India P. Ltd.*** (supra), the Honourable Apex Court was dealing with the provisions of the Trade and Merchandise Marks Act, 1958 and Order

IXL Rule 1 and Order XLIII of the Civil Procedure Code. It is held that the interlocutory orders are discretionary in nature and laid down the factors to be considered calling for interference by the Appellate Court. It is held that normally the discretion exercised by the Trial Court shall not be disturbed. It is held that the Appellate Court shall not substitute its own discretion, except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the Court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. Appellate Court shall not reassess the material and seek to reach a conclusion different from the one reached by the court below solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion.

20 In the case of ***Skyline Education Institute (India) Private Limited Vs. S.L. Vaswani and another*** (supra), the Honourable Apex Court considered the question of grant of temporary injunction in the matter of intellectual property. In that case, it was held that the Court may exercise the jurisdiction on the undisputed facts.

21 In the case of ***Kashi Math Samsthan and another Vs. Shrimad Sudhindra Thirtha Swamy and another*** (supra), the Honourable Apex Court reiterated the well settled principles to be considered while granting interim orders, those are (i) *prima-facie* case to go for trial, (ii) balance of convenience and (iii) irreparable loss and injury, if injunction is not granted. It is held that if the parties fail to prove *prima-facie* case, there is no question of considering the balance of convenience or irreparable loss and injury.

22 In the case of ***Dalpat Kumar and another Vs. Prahlad Singh and others*** (supra), the Honourable Apex Court considered the principles for grant of interim injunction. It is held that while granting injunction, the Court should cautiously look to the conduct of the party, probable injuries to either party and whether plaintiff could be adequately compensated if injunction is refused.

 In the case of ***Jennifer Mascarenhas and another Vs. Jose Antonio Domnic Dias and another*** (supra), this Court was dealing with somewhat similar facts, which are involved in the present case. In that case, the development had reached to second floor level. It was held that if in case the relief to stop an ongoing development work was to be granted, then the other party be put to

terms to ensure that in case other party fails in the suit, the aggrieved party would be adequately compensated. In that case, temporary injunction was refused by the Trial Court. The Trial Court found that the entitlement of plaintiff was doubtful and thus, refused the temporary injunction. The Appellate Court, however, set aside the order and granted temporary injunction. It was held that the order of the Appellate Court was not in accordance with law.

23 On considering above legal position, it is clear that what can be summed up is that while considering the question of grant of temporary injunction, the factors which are required to be considered are; *prima-facie* case, balance of convenience and irreparable loss. The two later considerations i.e. balance of convenience and irreparable loss are to be considered after a *prima-facie* is found in favour of the party, who seeks an injunction. The Appellate Court while deciding the appeal against the interlocutory order, shall in normal course not to substitute its own discretion in place of discretion exercised by the Trial Court, unless it is found to be perverse and without any foundation. In the present case, therefore, this Court has to consider whether the plaintiff has made out any *prima-facie* case, secondly, whether the Trial Court had rightly refused temporary

injunction by exercising the discretion judiciously and thirdly, whether the Appellate Court was right in substituting its discretion.

24 It is the case of the plaintiff that he came into possession by virtue of lease-deed executed in the year 1951, which was to be continued for a period of 15 years i.e. till 1965. The description of the property given is 12 class rooms each of 20 feet x 20 feet with a Verandah of 6 feet, urinals and four latrines and one office. No particulars of the exact area are given. The measurements of the open area are not given. From the submissions advanced at the bar and the photographs produced by the petitioners in this case showing that the school of the respondent is on one side of the road whereas the construction of the petitioners is going on the other side of the road, where no earlier existing construction is seen. Though it is stated, with force, that two office rooms of the school are demolished before the construction, the respondent could not show the existence of such rooms by any satisfactory record. As of today, the construction of seven slabs is completed. There is an undertaking given by the petitioners that in case the plaintiff succeeds in the suit, it shall demolish the construction at its own costs. The construction shall be thus, without prejudice to the rights of the parties.

25 Though it is stated that the undertaking is given only after the insistence by the Court, but it is a matter of record that now such an undertaking is already given. The petitioners are ready to give one more undertaking even in this Court. It is for sure that if the construction is stalled, that will seriously cause prejudice to the petitioners as the investment done till now is at stake. If the plaintiff fails in the suit, there is nothing to indicate that how this loss can be compensated. Second aspect that the petitioners have demonstrated as to how they acquired a right to develop the property with the plaintiff, accept the lease agreement of 1951, which does not give specific area of the leased property. It could not be safe to grant injunction.

26 The Trial Court has refused to grant injunction by well reasoned order mainly considering prima facie case. The Appellate Court has disturbed the said discretionary order without discussing how the Trial Court's order is perverse. The Appellate Court has practically substituted the discretion when it was not called for. This Court finds that certainly the Appellate Court ought not to have disturbed the order passed by the learned Trial Court and reached to a different conclusion. This Court finds that a case is made out by the petitioners calling for interference at the hands of this Court.

Considering all above, the following order is passed:-

ORDER

- I. The writ petition is allowed in terms of prayer clause (B).
- II. The order dated 28th December, 2023 passed by the learned District Judge-1, Ahmednagar in Miscellaneous Civil Appeal No.108 of 2023 by setting aside the order passed by learned 16th Joint Civil Judge, Senior Division, Ahmednagar on an application below Exhibit-5 in Regular Civil Suit No.438 of 2023, is quashed and set aside.
- III. The petitioners shall give an undertaking to this Court that they shall not demolish part 1B of the property and shall not claim any equity and the construction would be without prejudice to the rights of the parties and in case the plaintiff succeeds in the suit, they shall demolish the construction and give clear vacant possession of land to the plaintiff.
- IV. In view of disposal of the writ petition, pending civil applications, if any, also stand disposed of.

[KISHORE C. SANT, J]