



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 1026 OF 2024

IN WP/5725/2013

BORAPPA MAHADUAPPA DINDURKAR, L.RS. SHIVKANTA
AND OTHERS
VERSUS
NANDKUMAR GANGADHAR NAKOD AND OTHERS

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Advocate for Applicants : Mr. Chincholkar G. N.

AGP for Respondent/s-State : Mr. P. D. Patil.

Advocate for respective Respondents : Mr. A. S. Jadhav h/f Mr.
P. R. Katneshwarkar.

Advocate for respective Respondent/s : Mr. H. I. Pathan.

Advocate for respective Respondent/s : Mr. Pulkundwar S. B.

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CORAM : S. G. MEHARE, J.

DATE : 22.03.2024

PER COURT :-

1. Heard the respective learned counsels.
2. The dispute has a checkered history. The petitioners were fighting for deleting their mutation entry. Their bare case was that they are the owners and in possession of field survey No.150/5 (old No.150/1/G). Their land measuring 97 R. was never acquired by any Authority. However, after obtaining the *status quo* order on 16.09.2013 against the mutation entry No.2287, the mutation in the name of Panchayat Samiti was taken and his area was reduced. He has also complained against the Revenue Officer that even after having *status quo*

order, they had recorded the name of Panchayat Samiti/Non Applicant No.5 in their civil application by mutation entry No.9848. They have also impugned the said mutation entry. The Additional Commissioner passed an order on 24.11.2021 suspending the mutation entry No.9848 till the decision of this writ petition. Respondent No.5 was the party to the proceeding before the Additional Commissioner, Aurangabad but was not the party to the writ petition. The grievance of the applicants was that respondent No.5 is constructing a new building on their land. Therefore, injunction may be issued against them.

3. Learned counsel for respondent No.5 vehemently argued that they are constructing the building on the land on which their office premises was constructed long back. His contention is that the lands arising out of field Gut No.150 were acquired. The land allegedly claimed by the petitioners was also acquired from their fore fathers. To bolster his argument, he placed on record the award of the year 1969.

4. Learned counsel for the applicants submits that the land Survey Nos.150/2, 150/3 and 150/4 were acquired. Out of those lands, 23 Gunthas of land was acquired from survey No.150/2, 36 Gunthas from 150/3 and 13 Gunthas from survey No.154/4 was acquired. He would submit that in

award, the land survey No.150/5 of the petitioners was not shown acquired. Therefore, respondent No.5 cannot claim that they are constructing building on their own plot. He has no dispute about acquisition of those lands. He wanted to protect his land. The disputed facts are that the petitioners say that the construction of respondent No.5 is in his land and respondent No.5's contention is that the construction of premises is in their lands which they had acquired in 1969. It is a disputed question of fact that where the so called construction is going on. A map drawn by the Office of the District Land Records reveals that there were five strips of survey No.150. *Prima facie* it appears that respondent No.5 was aware that his mutation entry No.9848 was suspended. He did not impugn the said order of the Additional Commissioner.

5. Considering the disputed fact, this Court expressed the opinion that this is a civil dispute. Learned counsel for the applicants submits that the applicants are poor person where would they go? The Government has opened the Courts in every taluka with a view to have a quick and access to justice to the poor litigants. Be that as it may, this is not the Court of fact finding. Thereon, learned counsel for the applicants submits that at least *status quo* may be granted against the

construction of respondent No.5 till they reach to the Civil Court.

6. Learned counsel for the applicants states across the bar that he had advised the petitioners to go to the Civil Court, but their lawyer practicing at taluka Court told that since this matter is pending before this Court, petitioners should go to this Court. The fact of advice by the learned counsel Mr. Chincholkar to the petitioners has been confirmed in open Court from the mouth of the wife of the petitioner that he had advised them to go to the Civil Court. Even after the correct advice, the petitioners did not opt for the correct forum and unnecessary spend the time.

7. A remedy is available to the petitioners to file an appropriate suit. There are disputed facts. Hence, this Court cannot observed anything on the facts.

8. Hence, civil application stands dismissed.

(S. G. MEHARE, J.)

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