

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

917 WRIT PETITION NO. 1660 OF 2023

AVINASH PURSHOTTAM SHELKE  
VERSUS  
THE CHIEF OFFICER AND ANOTHER

...  
Advocate for Petitioner : Mr. Kulkarni Sanket S.  
Advocate for Respondent No. 1 : Mr. Shubham S. Kote  
h/f. Mr. Hon Ashwin Vinayak  
...

CORAM : SHAILESH P. BRAHME, J.

DATE : 12 APRIL 2024

PER COURT :

Heard learned counsel Mr. Kulkarni for the petitioner  
and learned counsel Mr. Kote holding for respondent no. 1.

2. Learned counsel for respondent no. 2 is absent.

3. Petitioner who is original plaintiff is aggrieved by the  
manner in which trial Court proceeded to pass orders on  
09.12.2022 and 19.01.2023 below exhibit 1 of RCS No. 441 of  
2022. Petitioner has filed suit for perpetual injunction and in  
alternative for compensation against the respondents before Civil  
Judge Senior Division, Rahata.

4. Petitioner claims that he is the owner of the subject matter and respondent no. 1 has proposed to construct road by encroaching upon the subject matter. Respondent no. 1 has contested the matter by filing say cum written statement. Application 5 was filed for temporary injunction.

5. On 09.12.2022, learned trial Judge passed order below exhibit 1 stating that the Court did not have jurisdiction as controversy pertaining to infrastructural project. It was opined that matter needs to be transferred to Civil Judge Senior Division, Ahmednagar by soliciting orders from learned Principal District Judge, Ahmednagar. Thereafter, on 19.01.2023 another order was passed recording that suit falls under Section 20 (A) and 41 (ha) of the Specific Relief Act and the jurisdiction of the Court was ousted and direction from learned Principal District Judge were solicited. Being aggrieved by both orders, present petition is filed.

5. Learned counsel Mr. S.S. Kulkarni for the petitioner submits that both the orders are against principles of natural justice. Due procedure of law was not followed. He would point out that unless issue is framed and opportunity is given to the petitioner, it would not be open to record that jurisdiction of the

Court is ousted. He would make submissions on the basis of provisions Order VII Rule 10 of the Code of Civil Code as well as Section 24 of the CPC.

6. Learned counsel for respondent no. 1 supports impugned order. According to him, learned Judge is justified in seeking appropriate orders from the Principal District Judge, Ahmednagar, for transferring the suit. In view of the statutory bar in the amended provisions of specific relief Act, the suit is not entertainable.

7. Both the impugned orders do not reflect that parties to the litigation were heard. Violation of principles of natural justice is apparent on record.

8. It is not the request of the respondents that the Civil Court lacks jurisdiction to entertain the suit. Learned counsel for the petitioner is right in contending that due procedure has not been followed. No opportunity of hearing was given to him. It is open for the Court to frame preliminary issue and the issue of jurisdiction can be addressed.

9. The purport of impugned orders would be transferring of the proceedings. In view of provisions of Order VII Rule 10 of

the CPC, the recourse is open to the Court to return plaint to the plaintiff for presenting it before the appropriate forum having jurisdiction.

10. I do not find that any application is made under Section 24 to the Principal District Judge for transfer of the proceedings. I am of the considered view, that both the impugned orders suffers from arbitrariness.

11. Both the impugned orders passed by learned Civil Judge Senior Division, Rahata, below exhibit 1 in RCS No. 441 of 2022 are quashed and set aside.

12. Writ Petition is disposed of. No costs.

**[ SHAILESH P. BRAHME, J. ]**