



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10179 OF 2023

SAMARTH LAND AND DEVELOPERS THROUGH ITS PROPRIETORS
SANDESH WALMIK YEOLE

VERSUS

GHANSHAM RAMCHANDRA PARDESHI AND OTHERS

Mr. R. N. Dhakane h/f Mr. S. S. Thombre, Advocate for the petitioner
Mr. D. P. Palodkar, Advocate for respondent Nos. 2 to 7.

CORAM : R. M. JOSHI, J.

DATE : 27th JUNE, 2024

PER COURT :-

1. By consent of both sides, heard finally at the stage of admission.
2. The original plaintiff in RCS No. 153/2021 seeks to takes exception to the order passed below Exhibit 39 rejecting application filed by the plaintiff for police protection to construct the compound wall to the suit property.
3. Before taking into consideration the contentions of learned counsel for both sides it is relevant to take note of certain important facts since they are undisputed. Plaintiff filed suit for injunction against the defendants restraining him from interfering into the possession of the

plaintiff over the suit property. The defendants opposed the said contention and raised plea of title in the suit property by way of adverse possession. Both plaintiff as well as defendants filed application for injunction against each other. The application for injunction filed by the plaintiff came to be allowed by order dated 27/07/2022 whereas the application filed by the defendants was rejected. The case of the defendants at the said *prima facie* stage having title of the suit property on the basis of adverse possession was not accepted by the Court. These orders have attained finality.

4. After passing of the order below Exhibit 6 in the suit, plaintiff applied to the Corporation for erection of compound wall to the suit property. Said authority permitted plaintiff to erect the wall. This was however obstructed by the defendants, hence application (Exhibit 39) came to be filed.

5. The impugned order indicates that the said application is rejected with direction to the parties to maintain status quo till final decision. It is also observed that plaintiff is seeking police help not for implementing temporary injunction order, not for protecting his possession and maintenance of status quo but wants to construct the compound wall to protect his property which may change the nature of

suit property.

6. In the light of the aforestated facts it is the contention of the plaintiff-petitioner that the learned Trial Court has committed error in not considering the application filed for the police protection. It is his submission that it is within the right of the Civil Court to pass such order in appropriate cases. It is sought to be argued that it was not open for the Trial Court to pass any fresh order directing maintenance of status quo, which was not passed while deciding Exhibit 6. He drew attention of the Court to the injunction granted against the defendants which is reproduced below:

"ORDER

- 1. The application (Exh.6) is allowed with costs.*
- 2. The defendants, their agents, subordinates or any person acting under them are hereby restrained from interfering the plaintiffs' peaceful possession over the suit property/plot more particularly described in para No.1 of the plaint."*

. It is submitted that the plaintiff having obtained permission from the Municipal Council to construct the compound wall, his right to construct compound wall includes his right to a peaceful possession over the suit property.

7. Learned counsel for the respondents/defendants opposed the

tenability of the petition on the ground that petitioner has suppressed material fact that is application filed under Order 39 Rule 1 and 2 of the CPC before the concerned Court alleging the breach of injunction order by the defendants. It is his submission that on this count alone, petition deserves to be dismissed. On the merit of case it is sought to be argued that the learned Trial Court in paragraph 9 of the order has held that the plaintiff has failed to prove any breach of injunction as alleged. It is also sought to be canvassed that though the impugned order is not happily worded, however, the per court of the order should be construed as the injunction order was granted in order to maintain the status quo of the suit property. Reference is made to the provisions of Order 39 Rule 1 and 2 in order to submit that the circumstances and for the purpose for which the injunction can be granted, the scope of interim relief granted cannot be extended beyond the same. It is submitted that though there is power of the Civil Court to direct the police help/assistance, such order cannot be passed in routine manner, but such power can be exercised only in case of grave urgency. To support his submission reliance is placed on the judgment of this Court in case of ***Nirabai J. Patil Vs. Narayan D. Patil, 1058 (2004) Mh.L.J.*** Reference is also made to the judgment of this Court in case of ***C.S.I. Church Devanankuruchi rep. By its Power of Attorney Rt. Rev. Dr. M. Dorai Bishiop in Coimbatore No. 204, Race Course Road Coimbatore and another Vs. Swaminathan and***

another, 2006-2L.W. 151. It is argued that in spite of granting of specific injunction, the Madras High Court has upheld the order of refusal of grant of police protection but instead expedited the proceeding before Trial Court. He further submits that the stage of the suit has reached to the evidence and suit is likely to be concluded and merits in short time.

8. The contention of the learned counsel for the petitioner with regard to the alleged suppression of the fact while filing the petition is not considered in the peculiarity of the circumstances in which the order is passed by the Trial Court. This Court would not have interfered in the impugned order considering the fact that the suit was at the final stage of hearing and it would be concluded in short time. However, this Court finds it absolutely essential to cause interference therein having regard to the nature of order. As recorded herein above there was interim injunction granted against defendants restraining them from interfering into the peaceful possession of the plaintiff over the suit property. *Prima facie* there is finding recorded by the Court which has attained finality to the effect that plaintiff is in possession of the suit property and that defendant has no right to obstruct the said possession in any manner. In spite of such specific finding recorded by the Court below and confirmed in the Writ Petition before this Court, the learned Trial Court has ventured to observe that it is a case wherein status quo is directed. In

Paragraph 10 in the initial part of this paragraph it is observed that the purpose of granting such order was to direct the parties to maintain status quo. However, Court further proceeds to issue fresh direction to the parties to maintain status quo. This is wholly impermissible. The Court was not seized with application for grant or rejection of injunction. The only issue before the Court as to whether the case being made out for the grant of police assistance or not. In such circumstances, order passed by the Trial Court of directing parties to maintain status quo cannot be allowed to remain on record.

9. Though learned counsel for the respondents is right to make submission that such power can be exercised in routine manner and is always subject to grave urgency, learned Trial Court seems to have not even bothered to record any finding thereon in spite of such submission being made before it. It is altogether different issue if the learned Trial Court was of the view that this is not the matter of grave urgency in order to invoke the extraordinary powers under Section 151 of CPC. The Trial Court, however, rejects application as if the defendants have *prima facie* some right in the property. Such indirect findings are totally contrary to the findings recorded by the Trial Court rejecting the contention of the defendants in this regard. Having considered the order from any angle, error appears on face of it, whole appreciating facts and

law on the subject.

10. This Court, however, is not inclined to allow application (Exhibit 39) at this stage because at the first instance Trial Court is required to record the finding with the regard to the *prima facie* breach of the injunction committed if any and the nature of urgency in order to invoke the extraordinary jurisdiction under Section 151 of CPC to direct police protection. The Court would also consider whether the obstruction caused in constructing compound wall is an obstruction to peaceful possession/occupation of suit property by plaintiff. Having regard to these facts, impugned order is set aside. Application (Exhibit 39) is relegated back the Trial Court for its decision afresh in accordance with law.

(R. M. JOSHI, J.)

ssp