



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

911 WRIT PETITION NO. 10094 OF 2024
WITH
WRIT PETITION NO. 9708 OF 2024

MITHUN VASANT SHINDE AND ANOTHER
VERSUS
KALPANA JANARDAN PATIL ALIAS KALPANA PRALHAD PATIL AND OTHERS

...
Advocate for the Petitioner : Mr. D.A. Mane h/f. Mr. M.M. Patil
Advocate for Respondent 1 : Mr. R.C. Bramhankar
...

CORAM : ARUN R. PEDNEKER, J.

Dated : September 20, 2024

PER COURT :-

1. In Writ Petition No. 9708/2024, this Court passed order on 9.9.2024,
which is as under :-

"1. Heard.

2. The learned counsel for the petitioner submits that the trial court has granted the police protection to the plaintiff to cut the banana crop and the order is passed on Exhibit 123 against defendants no.5 and 6. Defendants no.5 and 6 applied to the trial court to stay this order for the period of 30 days, so as to enable the defendants to approach the appellate court. In view of the application made, the trial court has stayed its own order for the period of 30 days by order dated 21.08.2024. The learned counsel for the petitioner submits that such an order ought not to have been passed by the learned trial court.

3. However, since, the order at Exhibit 123 is dated 13.08.2024, and, since, the period is nearly come to an end, there is no purpose for issuing notice in the matter. In absence of any appellate court order, the trial court to implement the said order passed in Exhibit 132.

4. As such, the writ petition is not entertained and disposed of."

The Writ Petition No. 9708/2024 filed by plaintiff was not entertained by this

Court and disposed of in view of the reasons made in above order.

2. However, Writ Petition No. 10094/2024 filed by the defendants was taken up for hearing on 13.9.2024. This Court thus recalled the above order dated 9.9.2024, vide order dated 13.9.2024 in Writ Petition No. 10094/2024 and directed the parties not to precipitate the ground situation and listed both the writ petitions on 20.9.2024 i.e. today. Both the petitions are heard on merits today.

3. The learned counsel for the petitioners in Writ Petition No. 10094/2024 submits that the police protection ought not to have been granted to the plaintiff/respondent No. 1 herein for cutting the banana crop and the police protection can be granted only when it is demonstrated before the Court that there is real danger or obstruction for cutting the banana crop. The learned counsel further submits that petitioners/original defendant Nos. 5 and 6 are in possession of the suit property and that no police protection ought to have been granted.

4. Per contra, the learned counsel for the respondent No. 1/plaintiff has relied upon para Nos. 11 to 13 the judgment of this Court reported in **2021 (3) Mh.L.J. 48 (Ramesh s/o. Yashwant Khedkar and Ors. Vs. Anil s/o. SitaramKhedkar)** and submits that police protection can be granted in facts situation, moreso when there is an interim order in favour of the concerned party.

5. Having considered the rival submissions, it is to be noted that prima facie plaintiff/respondent No. 1 is in cultivating possession of the suit property as reflected in the order of injunction passed in favour of the

plaintiff. Stay is not granted by the District Court in appeal filed against the interim order of injunction. In view of the prima facie findings of possession, injunction is granted in favour of the plaintiff. Considering the submission of the petitioners/defendant Nos. 5 and 6 that they are in possession of the suit property, it is obvious that defendant Nos. 5 and 6 are obstructing the possession of the petitioners. In view of the same, I do not see any error in the order of the Trial Court, granting police protection for removal of the banana crop as it is a perishable crop. Since substantial period has passed after the order dated 13.8.2024 and thereafter, the said order was also stayed for the period of four weeks by order dated 21.8.2024, it would not proper for this Court to interfere with the impugned order passed by the civil courts. As such, Writ petition No. 10094/2024 is dismissed.

6. Since the order dated 21.8.2024 has already worked out, no further orders are required and Writ Petition No. 9708/2024 is accordingly disposed of.

7. The learned counsel for the petitioners submits that order dated 13.9.2024 passed by this Court in Writ Petition No. 10094/2024 be continued for the period of two weeks from today. The said request is rejected as the said order was not passed on merits as reflected from para No. 5 of that order and any further stay to the impugned order dated 13.8.2024 would be detrimental to the plaintiff's standing crop.

(ARUN R. PEDNEKER, J.)

ssc/