

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 12167 OF 2024

Ismail Saifuddin Saifi
VERSUS
Kishor Narottam Patil And Others

- Mr. S. P. Shah, Advocate for the Petitioner
- Ms. A. S. Mantri, AGP for Respondent Nos. 2 and 3

CORAM : R.M. JOSHI, J
DATE : NOVEMBER 13, 2024

PER COURT :

1. Learned Counsel for the Petitioner submits that background of the present case is that admittedly the Respondent No. 1 was the original owner/vendor of the properties owned by the Petitioner. Further admittedly subject land is not land owned by Petitioner but adjoining land to Petitioner's property. The suit land has already been acquired by the Government. He also referred to the previous proceedings filed by the original owner bearing RCS No. 71/2005 wherein the issue of acquisition has been finally settled to hold that the suit land in the present case is acquired by the Government. It is, therefore, his submission that the learned Trial Court has committed error in not

appreciating the fact that in fact there is no dispute about area which is said to have been encroached. He further drew attention of the Court to the fact that the suit is not filed with the averment that the Plaintiff's land has been encroached by the Defendant No. 1, however, land adjoining to the Plaintiff's land is in question. He submits that the layout plan has already been sanctioned, as such, question of measuring area of block no. 89/1 does not arise.

2. Having regard to the documents filed on record and more particularly the judgment RCS No. 71/2005 as well as impugned order wherein certain facts are recorded, this Court *prima facie* finds substance in the contention of learned Counsel for the Petitioner for issuance of notice as well as stay to the impugned order.

3. Issue notice to Respondents, returnable on 17.12.2024. Learned AGP waives service of notice on behalf of Respondent Nos. 2 and 3/State. Till next date, there shall be stay to the impugned order.

4. In addition to usual mode of service,

Petitioner is at liberty to serve Respondents by any other permissible mode of service and to file affidavit of service before next date.

(R.M. JOSHI, J.)