

Ajay

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 3780 OF 2023

Dnyaneshwar Narayan Karanje and Ors.	.. Petitioners
Versus	
Eknath Mahalu Mahajan	.. Respondent

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- Mr. Vilas B. Tapkir, Advocate for Petitioners.
 - Mr. V.S. Tadke i/by M.B. Gawade, Advocate for Respondent.
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CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 28, 2024.

P.C.:

1. Heard Mr. Tapkir, learned Advocate for Petitioners and Mr. Tadke, learned Advocate for Respondent.

2. Writ Petition takes exception to the order dated 04.03.2023 passed in Misc. Civil Appeal No.27 of 2023 by the District Court dismissing the Appeal filed against order in Application below Exhibit “5” passed by the learned Trial Court on 18.01.2023. The present Suit is RCS No.292 of 2022.

3. The facts in the present case are interwoven in such a manner that the parties have filed cross Suits against each other. Defendant in the present Suit filed RCS No.133 of 2021 originally against the Plaintiffs. In that Suit, on 08.09.2021 Application below Exhibit “5” came to be allowed.

4. Being aggrieved, MCA No.235 of 2021 was filed by the Defendant No.1 therein. That MCA was allowed on 05.09.2022 reversing the order passed under Exhibit “5”. The order in MCA therefore was against the Plaintiffs in the present Suit proceedings namely RCS No.292 of 2022 who are Petitioners before me. During the pendency of RCS No.133 of 2021, Circle Officer, Shikrapur, Talegaon Dhamdhere, Taluka Shirur, Dist. Pune addressed letter to the Tahsildar for carrying out measurement. This letter was very specific and referred to the encroachment on Gat No.474 and Gairan land which was the subject matter of the Suit proceedings. The second letter is dated 13.03.2022 addressed by the Tahsildar to the Superintendent of Land Records, infact refers to the dispute raised by the Defendants in the present Suit in their Suit namely RCS No.133 of 2021. The issue pertains to encroachment on Gairan land by the Petitioners before me who are Plaintiffs in RCS No.292 of 2022. Allegation is to the effect that by brick masonry construction carried out by Petitioners on the approach road, access to the highway has been completely cut off by encroaching upon the Gairan land area in Gat No.474.

5. It is pertinent to note that the boundaries of Gat No.474 are also specified in the letter dated 13.03.2022 and the Tahsildar after acting upon the letter dated 24.01.2022 has clearly taken steps, surveyed and opined that the Petitioners before me have unauthorizedly encroached upon the Gairan land and cut off the said

approach road by constructing a compound wall by brick masonry construction and have closed the said road. The Tahsildar in the second letter dated 13.03.2022 has further opined that this road needs to be opened up. This letter also has reference to carry out measurement of the entire Gairan land.

6. In so far as the present Suit proceedings filed by the Petitioners are concerned, RCS No.292 of 2022 is filed by Petitioners on 09.09.2022 i.e. within six days after Application below Exhibit “5” was allowed by the Trial Court in RCS No.133 of 2021. The contents of the letter dated 13.03.2022 addressed by the Tahsildar to the Superintendent of Land Records, Shirur and passing of the order dated 05.09.2022 has prompted the Petitioners to file this cross Suit namely RCS No.292 of 2022, which is nothing but a clear afterthought and filed only for the purpose of protracting the inevitable and prolonging removal of encroachment.

7. The learned Trial Court decided Application below Exhibit “5” by its order dated 18.01.2023 and rejected the same comprehensively with substantial cogent reasons. MCA preferred against this order has also been dismissed comprehensively by order dated 04.03.2023 by the learned Appeal Court. The learned Appeal Court has infact replicated the map of Gat No.474 and its adjacent and adjoining areas while explaining and giving reasons for rejection. The

map which has been referred to and relied upon in the MCA order is the map attached to the sale deed which the learned Trial Court and the learned Appeal Court has held to be binding on each and every person who have obtained and secured title to the subject property. The very sale deed by the Petitioners before me namely Dnyaneshwar Narayan Karanje is in favour of Vilas Gavhane dated 19.12.1996 and is registered at Sr. No.1667 of 1996. Thereafter Vilas Gavhane has conveyed the property by another sale deed executed and registered on 22.03.2006 to Punjabrao Shamrao Waliwkar and two others. It is these three purchasers who have executed three sale deeds in favour of Plaintiff No.1 and Plaintiff No.1 has executed the last sale deed in favour of Defendants. After going through the chain of all these four sale deeds, the learned Trial Court has *prima facie* come to the definite conclusion that the map which is annexed to the first sale deed has travelled thereafter through all subsequent sale deeds and on the basis of that map, the learned Trial Court has held that Plaintiffs have failed to prove that there is no road as claimed which implies that the Plaintiffs have taken law in to their hands and encroached upon the said road area by cutting off the said road.

8. The learned Appeal Court further holds that the Plaintiffs have no legal right to close the road and obstruct the right to ingress and egress of the Defendants and an opinion has also been expressed that Plaintiffs have encroached upon Gairan land which necessarily is

required to be kept open. Such Gairan land cannot be claimed to be the private property by any private party. While determining the twin Applications below Exhibit “5”, cogent reasons have been given by the learned Trial Court in paragraph Nos.8 to 18 and after analysing the said reasons, the learned Trial Court has dismissed Application below Exhibit “5” of the Plaintiffs i.e. Petitioners before me. The learned Appeal Court in MCA has also judiciously decided the grievance of the Plaintiffs and the reasons which are returned in paragraph Nos.13 to 22 have been seen by me and I do not find any reason to interfere with the same on the basis of *prima facie* documentary evidence considered by the Appeal Court while giving those reasons.

9. While reading orders on Application below Exhibit “5” passed by the learned Trial Court and Appeal Court, it is seen that the Plaintiffs namely Dnyaneshwar Narayan Karanje and Ors. are apparently habitual trouble-makers in as much as one of the neighbours called Sampat Kharpude has also filed a similar Suit against them being RCS No.140 of 2020 in the Trial Court for removal of encroachment. Reference to that Suit is found and referred to by the learned Trial Court in paragraph Nos.16 to 19 of the order dated 18.01.2023 passed by the learned Trial Court. In the order dated 18.01.2023 passed while dismissing Exhibit “5” Application, it is seen that in that Suit there was no whisper about the alleged compound wall over the Suit property and the learned Trial Court has therefore

opined that there is a clear misrepresentation and suppression of material facts leading to filing of bogus Application before the Revenue Authority.

10. Be that as it may, in so far as the present Suits are concerned, in view of the specific letters addressed by the Circle Officer dated 21.01.2022 followed by the substantive letter addressed by the Tahsildar dated 13.02.2022 and the timeline which has been referred to and alluded to herein above, Petitioners are not entitled to any interim relief whatsoever. Both the impugned orders passed on Exhibit “5” by the learned Trial Court and the learned Appeal Court which are at page Nos.158 and 182 of the Writ Petition are reasoned and cogent orders which cannot be dislodged.

11. On the basis of the submissions and arguments advanced by Mr. Tapkir, substantial time was spent by this Court for hearing the present Writ Petition on two days. Considering the manner and conduct of the Petitioners, especially filing of RCS No.292 of 2022 immediately within five days after having been unsuccessful in defending RCS No.133 of 2021 (i.e. Exhibit “5” Appeal Court’s order) the present Suit is filed merely to pressurize and protract the inevitable. The entire purpose and intention gathered from the above facts for filing the present Suit is nothing but to curb and stall the statutory actions of the Statutory Officers and more specifically so with

respect to encroachment on Gairan land which is clearly observed by the learned Trial Court in the judgment and order which is impugned by the Petitioners.

12. Dismissal of this Writ Petition therefore cannot be unconditional. Petitioners are directed to pay costs, rather exemplary costs of Rs.50,000/- to the Kirtikar Law Library, High Court, Mumbai within a period of three weeks from today. Receipt of payment shall be placed on record within a period of three weeks from today.

13. Mr. Tadke, learned Advocate for Respondent would point out that there is an interim order which was in operation. In view of the dismissal of the present Writ Petition by this order, the said interim order is vacated immediately. It is directed that there shall be no impediment for the Statutory Officers of the State to carry out their duties strictly in accordance with law for opening up of the road.

14. Parties to directed act on an authenticated copy of this order.

15. List the present Writ Petition on Board on **21.03.2024 at 02:30 p.m.** for compliance.

16. With the above observations and findings, Writ Petition is dismissed.

[MILIND N. JADHAV, J.]

Ajay