

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6627 OF 2022

Mandakini Hanmant Sawant

.. Petitioner

Versus

Anil Namdev Sawant & Anr.

.. Respondents

.....

- Mr. Dilip Bodake for Petitioner
- Mr. Ravindra Vishnu – Laxmi Sankpal i/by R.V. Sankpal & Associates for Respondent No. 1

.....

CORAM : MILIND N. JADHAV, J.

DATE : APRIL 01, 2024

P. C.:

1. Heard Mr. Bodake, learned Advocate for Petitioner and Mr. Sankpal, learned Advocate for Respondent No. 1.

2. It is seen that parties are litigating before the learned Trial Court since 2021. However there is a precursor to the present Suit proceedings being RCS No. 264 of 1999 filed between the predecessor-in-title of the parties in the present Suit. Cause of action was in respect of the same suit property. That RCS No. 264/1999 came to be compromised by the predecessor-in-title of the parties. Invocation of cause of action in the present Suit proceedings happened due to Defendant No. 1 having started construction on the suit property by contending that RCS No. 264/1999 was compromised by his father

and at that time he was minor and therefore the terms of compromise would not be binding upon him.

3. Be that as it may what is crucial to note is that any construction that is carried out and more specifically the nature of the construction as can be seen from the order passed on 03.01.2022 in Application below Exh. 5 which is at page Nos. 179-182 and the judgment & order dated 30.04.2022 passed by learned District Court in Misc. Civil Appeal No. 41/2022, said construction has to be carried out with the express permission of the concerned appropriate Authority.

4. In the present case, Mr. Sankpal would contend that this is a Grampanchayat area on which construction is carried out and therefore valid permission would not be required and it would only suffice for Defendant No. 1 to inform the local Grampanchayat about the nature of construction. However that submission of Mr. Sankpal cannot be accepted in view of the notice dated 11.05.2021 issued by the local Grampanchayat to Defendant No. 1 which is appended at page No. 87 of the Writ Petition. According to that notice, the entire construction carried out on the suit property in respect of the suit building / structure is illegal. Learned Trial Court decided Application below Exh. 5 in favour of Plaintiff, however the learned District Court in its wisdom has reversed the said order. While doing so learned District Court has ascribed the reason that substantial construction is

completed by Defendant No. 1 and in such circumstances, the balance of convenience lies in favour of Defendant No. 1 and not in favour of Plaintiff. Such a finding in the facts and circumstances of the present case deserves to be set aside in limine. It cannot be sustained. What was for the learned District Court to see is whether the construction which is carried out by Defendant No. 1 is carried out by following the due process of law. When it is *prima facie* seen that construction carried out by Defendant No. 1 is contrary to the due process of law sans permission from any of the appropriate Authorities, the question of looking into balance of convenience cannot arise in such a case. Balance of convenience arises only when the questioned action of the party is affirmative and in consonance with his rights and in accordance with law. In the present case, it is seen that the learned District Court has on the issue of permission held that Defendant No. 1 will carry the risk of getting demolished any construction by the Competent Authority and therefore in that view of the matter, the injunction granted by the learned Trial Court deserved to be reversed. Said finding is in fact contrary to the tenets of law altogether. Merely because the construction is at an advanced stage, it cannot be a ground to allow Defendant No. 1 to permit unauthorised construction. The impugned judgment dated 30.04.2022 is *ex facie* illegal. The reasons given by the learned Trial Court in its order dated 03.01.2022

in the Application below Exh. 5 are cogent and in accordance with law. They are duly supported by the Court Commissioner's report which is at page Nos. 119-123 as also the Grampanchayat Notice dated 11.05.2021 which is at page No. 87 of the Petition. Learned District Court has completely ignored the aforesaid documents which go to the root of the matter. What is crucial to note is that the subject property being Grampanchayat property No. 215 is standing in the name of Subhadra Namdev Sawant, Namdev Antu Sawant, Kantabai Shamrao Sawant and Shamrao Antu Sawant which signifies that the suit property is still not even partitioned or divided so as to enable the Defendant to carry out construction on the suit property. In that view of the matter, no right is accrued whatsoever to the Respondent / Defendant to construct on any portion of the suit property and take law into his own hands.

5. Needless to state that the above findings are *prima facie* findings and shall not affect rights of any of the parties before the learned Trial Court in the pending Civil Suit which shall be decided on its own merits and the evidence by the parties.

6. In view of the above, impugned judgment & order dated 30.04.2022 stands quashed and set aside. Order dated 03.01.2022 passed below Exhibit '5' is confirmed. Respondent shall not construct any further until the determination of the suit proceedings. Learned

Trial Court is requested by this Court to dispose of RCS No. 220/2021 as expeditiously as possible and in any event within a period of one year from today. Parties shall co-operate with the Trial Court and shall not seek unnecessary adjournments unless absolutely necessary due to certain emergency or exigency. All contentions of both parties are expressly kept open.

7. With the above directions, Writ Petition is disposed.

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[MILIND N. JADHAV, J.]

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