

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION (ST.) NO.8561 OF 2024

Pandurang Rama Patil (dead) through his legal
representatives Shanta Pandurang Patil and Ors. .. Petitioners

Versus

The Executive Engineer and Ors. .. Respondents

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• Ms. Mohini D. Thorat i./by S. S. Redekar, Advocate for Petitioners.

CORAM : MILIND N. JADHAV, J.

DATE : APRIL 05, 2024

P.C.:

- 1.** Mentioned. Not on Board. Taken on Board.
- 2.** Heard Ms. Thorat, learned Advocate for Petitioners.
- 3.** Perused the praecipe dated 05.04.2024 and the Writ Petition.
- 4.** Regular Civil Suit No.141 of 2022 has been filed by Plaintiffs seeking sub-division of suit property being Gat No.80. In so far as the revenue record of the concerned suit property is concerned, names of 20 co-owners / holders is mentioned therein.
- 5.** That apart, there are four other more claims namely by Defendant Nos.20 to 24 also whose names are not mentioned in the revenue record but claims to be co-owners.

6. Be that as it may, Plaintiffs have filed suit seeking subdivision only. During pendency of the suit, ad-interim order is passed in application filed below Exhibit-5 on 11.10.2022 restraining Defendant Nos.20 to 24 from making any construction on the suit property / land till further orders of the Court. It is the case of the Plaintiffs that Defendant Nos.20 to 24 are carrying out construction of suit property are not the co-owners in respect of the suit property. When the ad-interim order was passed, learned Trial Court recorded that Defendant Nos.20 to 24 were carrying out construction at a breakneck speed and therefore the restraint order was passed on 11.10.2022.

7. What is significant to note is that Defendant Nos.20 to 24 are the Officers and functionaries of the State of Maharashtra namely; Collector, Executive Engineer, Public Works Department, Government of Maharashtra, Kolhapur Division; Assistant Engineer Grade – I, Public Works Department, Gadhinglaj, District – Kolhapur; Tahsildar, Gadhinglaj, District- Kolhapur and Talathi, Hadlage, Taluka – Gadhinglaj, District – Kolhapur.

8. What is more important to note is the fact that learned Trial Court while passing order dated 11.10.2022 has noted that there is no reference in the revenue record placed before the Court that Government is having any right in the suit land.

9. Ms. Thorat would submit that four months thereafter Application below Exhibit-5 filed by the Plaintiffs is rejected by the Trial Court by order dated 14.03.2023. She has drawn my attention to the paragraph No.9 of the order and would submit that learned Trial Court held that even if encroachment is proved in the trial, the relief of mandatory injunction can be granted to the Plaintiffs and the illegal construction can be demolished and therefore learned Trial Court has held that no serious prejudice will be caused to the Plaintiffs if construction is allowed to be continued and if construction is stopped then public funds will be wasted.

10. The said order of the learned Trial Court passed below Exhibit-5 is upheld by the District Court in Miscellaneous Civil Appeal No.20 of 2023 by its judgment dated 17.01.2024. In paragraph No.9 of the said judgment which is the only paragraph assigning reasons to uphold the order passed below Exhibit-5, the District Court states that Plaintiffs have not placed on record as to how Defendant Nos.21 to 24 have made an encroachment on the suit property and therefore on that ground the District Court has endorsed the view of the learned Trial Court in the order passed below Exhibit-5.

11. I have perused the pleadings. It appears that construction which is being carried out on the suit property is the construction of a new Talathi Office. The question before the Court is whether suit

property / land is Government land or whether it is a private property / land belonging to the Plaintiffs and Defendant Nos.1 to 19.

12. *Prima facie* evidence on record which is also acknowledged by the learned Trial Court is that there is no reference to the Government in the Revenue Records pertaining to the subject land. Learned Trial Court while passing the order below Exhibit-5 has held that there is an encroachment but for proving the said encroachment, the measurement report must be on record to prove that the encroachment had taken place.

13. Learned Trial Court has further held that before filing any such suit, the Plaintiffs ought to have got the land measured first through Government Surveyor to show that encroachment was done on specific area of the suit property / land by the Government and since no measurement map is on record, without it the encroachment cannot be proved only on the basis of photographs.

14. *Prima facie*, I find that the reasons given by the learned Trial Court in order passed below Exhibit-5 while rejecting the application filed below Exhibit-5 and its endorsing by the District Court in its judgment dated 17.01.2024 erroneous, insufficient and not in consonance with law.

15. It is seen that once learned Trial Court has given *prima facie* finding after examining all documents on record pertaining to the suit

land / property which is enumerated in the interim order dated 11.10.2022 that there is no reference in the revenue record that the Government is having any right in the said land, the reasons which are given for rejecting the application below Exhibit-5 are to the contrary and therefore not sustainable. Similarly, the District Court has not made any efforts to determine the issue and has allowed the construction to be carried on the suit land / property.

16. In that view of the matter, an arguable case has been made out by Ms. Thorat for issuance of notice to Defendant Nos.20 to 24.

17. Hence, issue notice to the Defendant Nos.20 to 24 who are Respondent Nos.1 to 4 in the present Writ Petition. Humdast permitted. In addition to Court's notice, Petitioners are directed to serve the Respondents a copy of this order and copy of the Writ Petition on Defendant Nos.20 to 24 who are Respondents before me and inform them about the next date of hearing by any permissible mode of service and file appropriate affidavit of service with tangible proof thereof. Defendant Nos.20 to 24 who are Respondents before me are directed to file their substantive Affidavit-in-Reply the Writ Petition to the explain their right, title and entitlement in the suit land / property on the basis of cogent and documentary material evidence before this Court on or before the next date.

18. Construction that is being carried on the suit property as on today shall be immediately halted and stopped by Defendant Nos.20 to 24. The judgment dated 17.01.2024 is stayed. Defendant Nos.20 to 24 shall place on record their entitlement to the suit land for carrying out construction. Learned AGP is directed to appear and take appropriate instructions and file Affidavit-in-Reply in compliance with this order.

19. Stand over to 19th April, 2024.

H. H. SAWANT

[MILIND N. JADHAV, J.]

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HARSHADA
HANUMANT SAWANT
Date: 2024.04.05
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