



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

Writ Petition No. 14089 of 2024

Smt. Parvati Jaganath Gaikwad and anr. ... Petitioners
V/s.
Mr. Rajesh Hatmantu Phaspunoti and others ... Respondents.

Mr. Surel Shah, Senior Advocate a/w. Mr. Sujit Lahvti a/w. Mr. Shaashkad Relekar a/w. Aakash Loye a/w. Mr. Parth Shah a/w. Mr. Altamash Kapadia a/w. Advocate Haaris Koradia i/b. Sujit Lahuti & Associates	Advocate for the Petitioners.
Mr. Suresh M. Sabrad a/w. Neha M. Zanje, Gracy Saldanna, Pratik Sabrad	Advocate for Respondent Nos.1 to 6.
Mr. Pankaj Das	Advocate for Respondent Nos. 7 to 9.

CORAM : S.M. MODAK, J

DATE : 22 October 2024.

P.C. :

Heard learned Advocate Mr. Surel Shah for the petitioners-original defendant Nos. 1 to 3 and Mr. Sabrad, the learned advocate for respondent Nos. 1 to 6-original plaintiffs. Also heard Mr. Das, the learned Advocate for respondent Nos.7 to 9-CIDCO.

2. The trial Court as per the order dated 1 August 2024 directed

defendant Nos.4 to 6 i.e. CIDCO to maintain status-quo with regard to suit property till filing of their say. There was an order to “proceed without written-statement against them” and on **21 August 2024** they have filed an application for setting aside the no written-statement order alongwith delay condonation application. The trial Court has fixed the matter on **22 November 2024** for the reply of the plaintiff on those applications.

3. The correctness of the order of status-quo is challenged by these petitioners. There is a **preliminary objection** about maintainability of the petition on behalf of the original plaintiffs for the reason that there is the remedy of preferring an appeal from order. Whereas according to learned Senior Advocate Mr. Surel Shah, the manner in which this order is passed requires interference by this Court in exercise of writ jurisdiction.

4. He placed reliance on the observations in the case of *Shail (Smt.) vs. Manoj Kumar*¹ and *Magadh Sugar and Energy Limited v/s. State of Bihar and others*². The Hon’ble Supreme Court in Paragraph No.20 has reproduced the observations in the earlier judgment. One of the contingency is when there is a violation of principles of natural justice, exception can be made out to the rule of alternative efficacious remedy.

5. Mr. Shah has invited my attention to the earlier application for

1 (2004) 4 Supreme Court Cases 785

2 (2022) 16 Supreme Court Cases 428

status-quo filed on 19 April 2024 and not passing any order. In fact while passing of an impugned order on 1 August 2024 on fresh application, the trial Court has called the say of the defendants and without waiting for the say, this impugned order came to be passed.

6. Considering the facts and circumstances, I am inclined to entertain this writ petition. It is for the reason, principles of natural justice were not followed. This situation has arisen due to haste shown by trial Court in passing status-quo order without following the procedure. It should not be passed in light manner.

7. Learned advocate for the plaintiffs submitted that these petitioners have not applied for vacation of the status-quo on 25 August 2024. It is true that the application for temporary injunction is pending. It is submitted that all the defendants have filed reply to Exhibit 5 application except CIDCO i.e. defendant Nos. 4 to 7. Their application for setting aside no written-statement order is pending. Subject to its decision now exhibit 5 has ripen for hearing. So by consensus, this writ petition can be disposed of with following directions:-

ORDER

- (i) The trial Court is directed to decide the applications filed by defendant Nos.4 to 7 reflected in the Roznama dated 21 August 2024 on 22 November 2024 positively.
- (ii) The plaintiffs are directed to file reply to those

applications on 22 November 2024 itself without seeking adjournment.

- (iii) Once the written-statement of CIDCO is taken on record, the trial Court to hear the application Exhibit 5 on 22 November 2024 itself.
- (iv) The defendant Nos.4 to 7 are directed to serve in advance the copy of the written-statement on learned Advocate for the plaintiffs.
- (v) Even defendant Nos. 1 to 3 can press for hearing on Exhibit 5, if CIDCO application is not decided for any reason.

8. It is made clear that the trial Court to decide Exhibit 5 application without being influenced by the observations made in the impugned order passed by that Court.

9. It is also made clear that this Court has not expressed any opinion on merits of the case.

(S.M. MODAK, J.)