



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

WRIT PETITION (WP) NO.2216 OF 2024

- 1) Abdul Zaheer s/o Abdul Bashir
Aged about 63 years, Occu. Service,
R/o. 142, Near Edgah, Behind Flour
Mill, Boriyapura, Bhankheda, Nagpur.

.... Petitioner(s)

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- 1) Union of India,
Ministry of Railways, Through its
General Manager, Central Railways,
Mumbai.
- 2) Estate Manager,
Central Railways, C.A. Road, Nagpur.
- 3) The State of Maharashtra,
Through Collector, Civil Lines,
Nagpur.

... Respondent(s)

Shri A.A. Sambaray a/w Shri H.H. Jichkar, Advocates for the
Petitioner/s

Shri Nandesh Deshpande, Advocate for the respondent Nos.1 and 2

Shri P.P. Pendke, AGP for the Respondent No.3/State

CORAM : ANIL S. KILOR, J.

DATED : 02.04.2024

ORAL JUDGMENT :

1. Heard.
2. **Rule.** Rule made returnable forthwith. Heard finally by consent of the parties.
3. The petitioner is the original plaintiff, who filed a suit for declaration and permanent injunction against the respondents. Along with the suit, the plaintiff filed the application under Order 39 Rule 1 and 2 of the Civil Procedure Code for temporary injunction, seeking protection from dispossessing the petitioner, which has been denied. Hence, this petition.
4. It is the case of the petitioner that in Writ Petition No.528 of 1999, the Co-ordinate Bench of this Court vide order dated 23.04.1999, granted liberty to the effect that the petitioner should get the proceeding decided as regards the ownership of land i.e. whether it is the land owned by the Railway or the State Government.

5. The petitioner accordingly, approached to the Superintendent of Land Record (SLR), who has held that the land in question is not of the Railway Department but of Medical Department (State Government). It was also observed in the order of the SLR dated 02.11.1999 that the father of the petitioner constructed the house over the land in question in the year 1913 and since then, the petitioner and his family is in possession of the land in question.

6. In the appeal by the petitioner before the Deputy Director of Land Record, the order of the SLR was maintained. However, it is submitted that by ignoring the said finding, the defendant Nos.1 and 2 issued notice of dispossession, which gave cause to the petitioner to file the above referred suit.

7. The learned counsel for the petitioner argued that both the Courts below have discarded the orders of SLR and Deputy Director of Land Record, while rejecting the prayer of the petitioner for temporary injunction.

8. It is further submitted that much weightage has been given to the suit filed by the father and dismissal of the same, without looking at the prayer clauses and the findings recorded by the learned trial Court while dismissing the said suit. He therefore, submits that both the Courts below have committed error in rejecting the application for temporary injunction.

9. It is submitted that despite the *status quo* granted by the learned Lower Appellate Court was in operation and even though a statement was made by the defendant Nos.1 and 2 to maintain *status quo* in contravention of it 60 % of the construction in question was demolished by the defendant No.1. He therefore, submits that both the Court below have committed error in denying the temporary injunction to the petitioner.

10. On the other hand, the learned DSGI for the respondent Nos.1 and 2 strongly opposed the present writ petition and submits that both the Courts below have rightly considered the possession of the petitioner as illegal and since he suppressed

the dismissal of the suit filed by his father, the Courts below disinclined to grant the interim injunction in favour of the petitioner. He therefore, submits that there is no perversity or illegality committed by the learned trial Court and the First Appellate Court in granting of temporary injunction to the petitioner.

11. In light of the rival contentions of the parties, I have perused the record and the impugned judgment and order.

12. From the record, it is apparent that since beginning there is a dispute about the ownership of the land in question, as the plaintiff claimed that the land belongs to the State Government whereas, the defendant No.1 and 2 claimed it is their land.

13. Admittedly, this Court, in Writ Petition No.528 of 1999, granted liberty to the petitioner to agitate the said issue by filing the proper proceeding.

14. Accordingly, a proceeding was filed before the SLR. The SLR, in the said proceeding, categorically held that the land in question does not belong to the Railway Department.

15. It is important to note that, the said order was maintained by the Deputy Director Land Record in the appeal filed by the Railway Department, which was not challenged by the Railway and therefore, it has attained finality.

16. Despite this fact, the Railway Department issued notice of dispossession of the petitioner which constrained the petitioner to file the suit for declaration claiming following reliefs.

“a) declare that the plaintiff is the is in possession of the suit property i.e. Plot admeasuring 45' x 17' of Mouza Bhankheda, Nazul Sheet No.181 of Chalta No.499 and S.No. 85/1, popularly known as Motibagh, Guardline;

b) grant permanent injunction in favour of the plaintiff and against the defendants from dispossessing the suit property;

c) saddle the costs of the suit upon the Defendants; and

d) grant any other reliefs as this Hon'ble Court deems fit and proper in the facts and circumstances of the case.”

17. The learned First Appellate Court, while dismissing the appeal, has held that the City Survey Department is not competent to decide the ownership of the suit property and for that reason the learned Lower Appellate Court discarded the orders of the SLR and Deputy Director of Land Record. However, in the same breath the learned Lower Court held that the Railway is the owner of the property in view of the documents of the City Survey Department prepared, after the inquiry.

18. It is surprising to note that the documents of the City Survey Department, produced by the plaintiff, were discarded, saying that the said department cannot decide the ownership and at the same time, when the Railway produced the document of the same department, that has been considered to hold that the petitioner is the owner.

19. Thus, I have no hesitation to hold that the both the Courts below have committed error in discarding the orders of the SLR and Deputy Director of Land Record.

20. Moreover, as regards the suppression of the outcome of the earlier suit, the suit was filed by the father and according to me, any decision in the said matter has no bearing on the present matter. The reason is that, in the suit filed by the father, the prayers were as under:

“1. A decree restraining the Defendants from dispossessing the Plaintiffs forcibly form the possession of the suit property described in para 1 of the plaint except in due course of law, may kindly be pleased.

2. Any other relief which this Hon’ble Court deems just and proper may kindly be granted to the plaintiffs.

3. The Costs of the suit be saddle on Defendants.”

21. The learned Trial Court while dismissing the suit, has recorded the findings as regards the issues framed are as under:

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“A. Does the Plaintiffs prove that they are in the possession of suit property? ..Affirmative
B. Does Plaintiffs further prove that Defendants are obstructing their possession by disposing them forcibly from the suit property? ..Negative
C. Are Plaintiffs entitled to relief of injunction as prayed for? Negative.
D. What order and decree? Suit is dismiss with costs.”

22. From the findings recorded against the issues, show that since the plaintiff failed to prove that the defendants are obstructing his possession by dispossessing him forcibly from the suit property, the suit was dismissed.

23. Whereas, in the present matter, there is a notice issued by the Railway for dispossession, which was not there in the earlier suit.

24. It is important to note that in the earlier suit also the finding as regards the possession of the father of the petitioner was recorded in affirmative. However, the suit was dismissed only on the ground that the father of the plaintiff failed to

prove that the Railway was obstructing his possession or there is any possibility of forcibly removing him.

25. In the circumstances, both the Courts below have given unnecessary weightage to the fact of suppression of dismissal of the earlier suit, which as I have already observed that, it has no bearing on the present matter.

26. In the circumstances, I am of the opinion that the petitioner has established *prima facie* case in his favour, the balance of convenience lies in favour of the petitioner and if temporary injunction is not granted, the petitioner would suffer irreparable loss, the petitioner is entitled for grant of temporary injunction by quashing and setting aside the common order below Exhs.5 and 23 dated 11.01.2022 passed by the learned 5th Joint Civil Judge Senior Division, Nagpur and the judgment and order dated 19.03.2024 passed by the *Ad hoc* District Judge-6, Nagpur in Misc. Civil Appeal No. 90 of 2023. Accordingly, I pass the following order:

(i) The Writ Petition is **allowed**.

(ii) The common order below Exhs.5 and 23 dated 11.01.2022 in RCS No.883 of 2017 passed by the 5th Joint Civil Judge Senior Division, Nagpur and the judgment and order dated 19.03.2024 passed by the *Ad hoc* District Judge-6, Nagpur in Misc. Civil Appeal No.90 of 2023, are hereby quashed and set aside and consequently, the applications below Exhs.5 and 23 filed in RCS No.883 of 2017, are hereby **allowed**.

27. Considering the nature of the dispute, the 5th Joint Civil Judge Senior Division, Nagpur is directed to expedite the suit and in any case, decide the same within 9 months from today.

28. The observations made herein above are *prima facie* and the learned 5th Joint Civil Judge Senior Division, Nagpur shall not get influenced by such observations, while deciding the suit.

Rule is made absolute in the above terms. No costs.

[ANIL S. KILOR, J.]