



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

49 WRIT PETITION NO. 6194 OF 2022

1. Moreshwar Life Services, Pvt. Ltd.
Parbhani Through It's Director,

A) Dr. Shekhar Uttamrao Ingle
Age: 45years, Occ: Medical Practitioner,
R/o. Bus-stand road, Parbhani.

B) Dr. Vivek Sudhakar Rao Kulkarni
Age: 44years, Occ: Medical Practitioner,
R/o. Bus-stand road, Parbhani.

C) Dr. Sushil Bhagwanrao Dodke
Age: 40years, Occ: Medical Practitioner,
R/o. Bus-stand road, Parbhani.

... PETITIONER

VERSUS

Laxmi Narayan Mandir Trust Parbhani,
Registered Trust Vide by No. A-185,
Trustee by name-
Pawan S/o Girdharilal Purohit,
Age: 41years, Occ: Trustee,
R/o. New Mondha, Parbhani.
Tal. & Dist. Parbhani.

... RESPONDENT

-
- Advocate for the Petitioner : Sr. Adv. R. N. Dhorde i/b. Mr. V. R. Dhorde
 - Advocate for Respondent : Mr. P. N. Kalani a/w. Adv. S. S. Rath
-

CORAM : ROHIT W. JOSHI, J.
DATE : JUNE 30, 2025

ORAL JUDGMENT :

1. The respondent is Public Trust registered under the Maharashtra Public Trust Act, 1950. It has filed a suit for perpetual

injunction being Regular Civil Suit No. 73/2020, *inter alia* praying that petitioner - defendant should not make any encroachment on the suit property. The parties will be hereinafter referred as plaintiff and defendant. The plaintiff claims ownership over the suit property on the basis of a Will executed by *Manikabai Bharmalji Vyas*. The defendant's claim is that Manikabai had sold the suit property to one *Madhukarrao Kishanrao Vaidya (Pinglikar)* vide registered sale deed dated 03.05.1961. They contend that the sale deed executed by *Manikabai* to *Madhukarrao* mentions the southern boundary as municipal road. This property which was purchased by *Madhukarrao* was subsequently divided into three parts between the descendants of *Madhukarrao*. The petitioner has purchased the southern most portion of the property, purchased by *Madhukarrao* from *Jayantibai Dattatray Vaidya (Pinglikar)* vide registered sale deed dated 04.07.2011. The southern boundary of the property purchased by the petitioner is mentioned as road.

2. The plaintiff had filed application for grant of temporary injunction, which was rejected by the learned Trial Court. The, plaintiff thereafter filed an appeal being Misc. Civil Appeal No. 43/2020, wherein a map was filed invoking Order XLI Rule 27 of the Code of Civil Procedure. The learned Appellate Court vide judgment and order dated 30.08.2021 remanded the matter back to the learned Trial Court for deciding the application for grant of temporary injunction afresh. After

remand of the matter, the learned Trial Court again rejected the application for grant of temporary injunction vide order dated 07.10.2021. The respondents again carried this order in appeal. The appeal preferred by the respondent came to be allowed vide order dated 19.04.2022. The learned Appellate Court has held that the map was not properly appreciated by the Trial Court that it and erred in rejecting the application. The original defendants have challenged this order passed by the learned Appellate Court in the present petition. Vide order dated 23.06.2022 while issuing notice, this Court has directed the parties to maintain *status quo*, prevailing as on that date.

3. The photographs of the hospital building constructed by the petitioner, which are not in dispute, indicate that the construction of the building is complete. The building is abutting the public road, as is clearly apparent from the photographs. The suit is filed in the year 2020. The learned Trial Court has rejected the application for grant of temporary injunction. The order of *status quo* granted by this Court is operating since 23.06.2022. There is no prayer for mandatory injunction for demolition of construction in the application for grant of temporary injunction. Although it is contended by the learned counsel for the respondent that this construction has come up after filing of the suit, I am of the view that such contention cannot be adjudicated while deciding a petition arising out of an order of temporary injunction.

4. Having regard to totality of circumstances, particularly the sale deed executed in favour of Late *Madhukarrao* as also having regard to the fact that the building construction is completed, ends of justice will be subserved by directing parties to maintain *status quo* till final disposal of the suit. The parties are restrained from making any construction over the suit property till the final disposal of the suit.

5. The petitioner shall not make further construction, however, its employees, patients, and visitors will be entitled to access the hospital building from the public road. The respondent shall not make any construction or raise any obstruction between the hospital building and the road.

6. Needless to mention that the observations in this order are *prima facie* observations for the purpose of balancing equities, which arise in every matter concerning temporary injunction. The learned Trial Court will not be influenced by these observations while deciding the suit on merits.

7. The writ petition is **disposed of**.

8. The civil applications, if any, stand **disposed of**.

[ROHIT W. JOSHI,J.]