

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3711 OF 2025

Kalpvrksha Stone Crushers Pvt Ltd & Ors

..Petitioners

Versus

Shivajirao Dattatray Ingawale & Ors

...Respondents

Mr. Prajakt Arjunwadkar, with D.A. Utture, for the Petitioner.

Mr. S.S. Patwardhan, with Padmanabh D. Pise and Sejal A Hariyan,
i/b P Padmanabh & Associates, for the Respondent.

CORAM: N. J. JAMADAR, J.

DATED : 2nd APRIL 2025

P.C.:

1. This Petition under Article 227 of the Constitution of India calls in question the legality, propriety and correctness of a judgment and order dated 30th January 2025 passed by the learned District Judge, Sangli, whereby the Appeal preferred by the Petitioners-original Defendants Nos. 4 and 5 came to be dismissed affirming an order of injunction passed by the Trial Court in RCS No. 174 of 2022, thereby restraining the defendants from excavating and mining minor minerals from the land bearing Survey No. 23, new Gat No. 88, situated at Village Belanki, Taluka Miraj, District Sangli ("the suit land").

2. Original Survey No. 23, new Gat No. 88, was owned by Defendant No.1, Kalpvrksha Stone Crushers Pvt Ltd & Ors. Defendant

Nos. 2 and 3 are the erstwhile directors of Defendant No.1. Defendant Nos. 4 and 5 have substituted Defendant Nos. 2 and 3 as the directors of Defendant No.1.

3. Under a Registered Sale Deed dated 22nd June 2012, Defendant Nos. 2 and 3, the erstwhile directors of Defendant No.1, had sold 32.80 Hectors land to Respondent Nos. 1 to 6 – the Plaintiffs, for a valuable consideration. The Plaintiffs were put in possession of the land. It, however, transpired that the land which was put in the possession of the Plaintiffs, was substantially less in area than 32.80 Hectors. Further, enquiries revealed that Defendant No.1 furnished incorrect boundaries of the land, which was sold to the Plaintiffs.

4. The Defendants have been unlawfully operating a stone crusher on an area admeasuring approximately 7 Hectors, which was sold to the Plaintiffs under the said Sale Deed. The Defendants were exploiting the said land by excavating and mining the minor minerals. Thus, Suit for recovery of possession of encroached portion of about 7 Hectors of land from the Defendants and also to restrain the Defendants from carrying out further excavation and mining of minor minerals.

5. In the said Suit, the Plaintiffs preferred an Application for temporary injunction. By an order dated 11th November 2022, the said Application came to be rejected opining *inter alia* that whether the land which was in the possession of the Defendants was also agreed to be

sold to the Plaintiffs was required to be determined at the trial. Since the dispute was regarding the area of the land sold to the Plaintiffs under the Sale Deed, the boundaries will prevail.

6. Being aggrieved the Plaintiffs had preferred an Appeal before the District Court, being MCA No. 269 of 2022.

7. In the meanwhile, by an Order on Application (Exhibit “8”) the Land Records Department was directed to measure the suit land and submit a Report. By a further order dated 7th October 2023, passed on Application (Exhibit “66”), the learned Civil Judge directed the Court Commissioner to specifically indicate as to which of the parties was claiming occupation over particular portions of the suit land. Resultantly, a further report came to be filed by the Court Commissioner.

8. Upon receipt of the said Report of the Commissioner, the Plaintiffs sought leave to withdraw the said Appeal with liberty to file a fresh Application for temporary injunction before the Trial Court. By an order dated 5th April 2024, the learned District Judge was persuaded to allow the Plaintiffs to withdraw the Appeal with liberty as prayed.

9. Availing the said liberty, the Plaintiffs again filed an Application for temporary injunction (Exhibit “74”) asserting that in the Court Commissioner’s Report, it has been indicated that an area admeasuring 7.01 Hecter owned by the Plaintiffs was in the possession of the

Defendants and the Defendants were excavating the suit land and exploiting the minor minerals unabated. Therefore, the Defendants be restrained from carrying out further excavation and mining of minor minerals from the said area admeasuring 7.01 Hecter.

10. The Application was resisted by the Defendants. By an order dated 3rd September 2024, the learned Civil Judge was persuaded to allow the Application holding that *prima facie* it appeared that the Defendants were in possession of 7.01 H land which they had sold to the Plaintiffs and were exploiting the said land.

11. The learned District Judge found no error in the exercise of discretion by the Trial Court.

12. Mr. Arjunwadkar, the learned Counsel for the Petitioners, strenuously submitted that the learned Civil Judge as well as the learned District Judge have committed gross error in law in granting injunction solely on the basis of Court Commissioner's Report, the veracity and reliability of which is yet to be tested. Laying emphasize on the fact that the first Application for temporary injunction was rejected by the Trial Court and even the Appeal thereagainst was withdrawn, Mr. Arjunwadkar would submit that the only change in the circumstances was the Report of the cadastral surveyor. Mr. Arjunwadkar made a strenuous effort to draw home the point that the conclusions drawn by the cadastral surveyor are demonstrably incorrect. In the revenue

proceedings before the Superintendent, Land Records, Sangli, the unreliability of the endorsement made by the cadastral surveyor and the order passed by the Deputy Superintendent, Land Records, Miraj, on 9th September 2022 has been commented upon. At any rate, according to Mr. Arjunwadkar, the Court Commissioner's Report could not have been relied upon without the cadastral surveyor, who carried out the measurement, having been examined before the Court and subjected to cross-examination.

13. A strong reliance was placed by Mr. Arjunwadkar on a decision of a learned Single Judge of this Court in the case of **Devidas Nathuji Thakare & Ors Vs Gangadhar Bhuraji Burange**,¹ wherein it was enunciated that until the Commissioner is examined and the party aggrieved by the Commissioner's Report is granted liberty to challenge the correctness of findings of the Court Commissioner, by cross-examining the Commissioner, the said Report cannot be relied upon. Therefore, according to Mr. Arjunwadkar, the impugned orders which are primarily based on the Court Commissioner's Report, deserve to be quashed and set aside.

14. Mr. Patwardhan, the learned Counsel for the Respondents-Plaintiffs, countered the submissions on behalf of the Respondents. It was submitted that, there is no controversy over the fact that an area admeasuring 32.80 H was sold by Defendant No.1-company to the

¹ 2014 SCC OnLine Bom 3494.

Plaintiffs. However, the Defendants, by taking undue advantage of an error in the Revenue Record, have unlawfully continued to be in possession of the 7.01 H land and are exploiting the same, despite having sold the entire 32.80 H land.

15. Mr. Patwardhan would submit that the Defendants cannot draw any mileage from the fact that initially the Trial Court had refused to grant injunction and an appeal thereagainst was withdrawn by the Plaintiffs. The withdrawal of the Appeal was not unconditional. In view of the subsequent developments, the Plaintiffs have withdrawn the appeal with liberty to file a fresh application. Therefore, the Defendants cannot take any advantage of the said fact.

16. Mr. Patwardhan further urged that the Trial Court has merely restrained the Defendants from excavating the land, which is in the unlawful occupation of the Defendants. If the mining operations continue, even if the Plaintiffs succeed in the Suit, the land cannot be restored to the Plaintiffs. Such an order, in the circumstances of the case, does not warrant any interference in exercise of supervisory jurisdiction when the Courts below have recorded concurrent *prima facie* findings of facts, urged, Mr. Patwardhan.

17. To start with, it is necessary to note that, there is no dispute about the fact that the Sale Deed records that an area admeasuring 32.80 Hectors of land, out of Gat No. 88, was conveyed thereunder. The

controversy between the parties revolves around the exact area of the land which was sold under the said Sale Deed. The endeavour of the Defendants was to show that on the southern side of the land which was sold under the said Sale Deed, there was a parcel of the non-agricultural land used for industrial purpose, which continued to be owned and possessed by the Defendants. In substance, the Defendants contended that though an area of 32.80 Hectors was shown to have been sold to the Plaintiffs, yet, what was actually sold was only the area bound by the boundaries, shown in the said Sale Deed. Thus, in the event of the dispute over area, boundaries prevail.

18. The measurement carried out by cadastral surveyor indicates that entire land indicating 7.01 H forms part of the land which was sold under the said Sale Deed. The Report of the cadastral surveyor, indicates that in the Record of Rights of the new Gat No. 88, an incorrect area was shown.

19. Mr. Arjunwadkar, was at pains to urge that this observations of the cadastral surveyor is required to be tested at the trial. Therefore, on the basis of the Report of the cadastral surveyor, the Defendants could not have been restrained.

20. The aforesaid submission does not merit acceptance. It is imperative to note that the Defendants cannot controvert that they had proposed to sale 32.80 Hector land to the Plaintiffs. In addition to the

clear recital in the Sale Deed about the area of land sold thereunder, Defendant No.1 had passed Resolution on 16th April 2012 to sell 32 Hecter 80 Are land, i.e., total 82 Acres of land out of Gat No. 88 to the Plaintiffs. Thus, there was absolute clarity on the part of the Defendants as to the area of land which they intended to sell to the Plaintiffs.

21. In this view of the matter, the endeavour on the part of the Defendants to now cling to the boundaries of the land, which was sold under the said Sale Deed, cannot be countenanced unreservedly. Nor the fact that the earlier Application for temporary injunction was rejected salvages the case of the Defendants. At that stage, the learned Civil Judge was not equipped to determine the issue as the measurement map was not available.

22. In any event, the nature of the impugned order cannot be lost sight of. If the Defendants continue to exploit the 7.01 Hecter land unabated, the very identity of the land would be lost. If the Defendants are not restrained from carrying out further mining operations, the Plaintiffs would suffer an irreparable loss, and, even if, eventually, the Plaintiffs succeed in the suit, the decree may remain a paper decree as by that time the very identity and utility of the suit land would be lost.

23. In these circumstances, the Courts below have correctly exercised the discretion to restrain the Defendants from carrying out further

excavation and mining operations. No interference is thus warranted in exercise of supervisory jurisdiction.

24. The Petition, therefore, stands dismissed.

[N. J. JAMADAR, J.]