

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 4322 OF 2024

Damu Deoram Bhosale	...Petitioner
Versus	
The Maharashtra State Boar Development Corporation & Ors.	...Respondents

Mr. Pratik Tomti i/b. M.P. Vashi & Associates, for the Petitioner.
Ms. Yogita A. More i/b. Yogita More & Associates, for the Respondent No.1.
Mr. Sachin H. Kankal, AGP for Respondent Nos.2 and 4.
Mr. Pratik Divkar i/b. Ms. Rajni Divkar for Respondent No.3.

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MAHENDRA
WARGAONKAR

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CORAM : G. S. KULKARNI &
ADVAIT M. SETHNA, JJ.
DATE : 28 APRIL 2025

ORAL JUDGMENT (PER ADVAIT M. SETHNA, J.):

1. This petition under Article 226 of the Constitution of India is filed for the following reliefs:-

“a. That a writ of mandamus or any other writ, order or direction be issued, ordering and directing the Respondent No. 1 to direct the Respondent No. 3 to remove the debris, stone, soil, murum, construction material etc. on Gat Nos. 59, 60, 61, 70 and 74 and restore the land of the Petitioner to its original state.

b. That a writ of mandamus or any other writ, order or direction be issued, ordering and directing the Respondent No. 1 to direct the Respondent No. 3 not to enter and disturb the possession of the Petitioner of Gat Nos. 59, 60, 61, 70 and 74 in possession of the Petitioner.

c. That in the alternative of prayer (a), a writ of mandamus or any other writ, order or direction be issued, ordering and directing the Respondent No. 1 to direct the Respondent No. 3 to remove debris, stone, soil, murum, construction material etc. on part of Gat Nos. 59, 60, 61, 70 and 74 which is in possession of the Petitioner.”

2. The petitioner is primarily aggrieved by the alleged inaction of respondent no.1 i.e. MSRDC who has failed to prevent the respondent no.3 i.e. G.V.P.R. Co. - Private contractor from encroaching and causing damage to the agricultural lands of the petitioner. We have heard Advocate Shri Pratik Tomti, learned counsel for the petitioner and Ms. Yogita More, learned counsel for the respondent no.1, Mr. Sachin Kankal, learned AGP for respondent no.2 and Ms. Rajni Divekar, learned counsel for respondent no.3 and with their assistance, we have perused the record. It is the case of the petitioner that he is the owner of agricultural lands bearing Gat No.59, 60, 61, and 70 situated at village Dhamani, Tal. Igatpuri, District Nashik. The petitioner also claims to be the co-owner of lands bearing Gat No.74 along with his family members situated at the same location, collectively referred to as the subject agricultural lands. According to the petitioner, a part of the said agricultural land has been acquired by respondent no.1 in the year 2018 for construction of Samruddhi Expressway also known as 'Hindu Hriday Samrat Balasaheb Thackeray MahaMarg'.

3. The petitioner would further contend that he and his family members have been paid compensation for acquisition of the part of such subject agricultural lands, for the above project in June 2018. After the acquisition of the subject agricultural lands was completed, the petitioner is left with a small portion of such land i.e. about 15 to 30 gunthas each of

land bearing Gat Nos.59, 60 and 70, about 79 gunthas of land bearing Gat No.74 and entire land bearing Gat No.61. The petitioner would further state that after acquisition of part of the subject agricultural lands, it was marked by respondent no.3 for installing pillars along with boundary line of said Samruddhi Expressway. However, after the construction work of the said expressway commenced, the respondent no.3 suddenly started dumping debris, stone, soil, murum, construction material, etc. on the part of the subject agricultural lands, in the possession of the petitioner. The petitioner would further state that due to the action of the respondent no.3 of dumping such debris, waste, etc. water is accumulated on the subject agricultural lands in possession of the petitioner. As a result, the petitioner is unable to carry out any agricultural activities on the subject agricultural lands. The petitioner would state that on 6 December 2020 respondent no.3 stole the soil from petitioner's subject agricultural land. Such fact and other instances were reported by the petitioner in its complaint dated 16 December 2020, addressed to the Inspector of Police, Ghoti - Budruk, Nashik.

4. The petitioner has addressed several letters/communication to respondent no. 3 as also complaints made to District Collector, Nashik and complaints with the Executive Engineer of Respondent no. 1 against the illegal acts committed by respondent no.3. However, there is no response from the said authorities.

5. It is in the aforesaid backdrop, we have heard the learned counsel for the parties and with their assistance we have perused the record. To us, it is clear that the issues raised in the petition revolve around disputed questions of fact. The relief sought against the respondent no. 3, who is a company – private entity situated at Nashik. The petitioner is primarily aggrieved by the acts of respondent no. 3 of dumping debris, stone, soil, murum, construction material etc., on the petitioner's agricultural land. The petitioner seeks action against the alleged acts of respondent no. 3 in laying of cluster pipeline etc. on the subject agricultural land.

6. In our view, the petition which seeks a direction against respondent no. 3 to remove the debris and other materials from the agricultural land of the petitioner, and to further direct respondent no. 3 not to enter on such land of the petitioner, are reliefs which are not maintainable in a writ petition. In this view of the matter, we do not delve into the merits of the rival contentions. The reliefs claimed against the respondent no.3, a private contractor would completely fall within a realm of a private dispute for which the private law/general remedy is available to the petitioner. In any event, respondent no. 3 against whom the above reliefs are sought in these proceedings, does not fall within the ambit and framework of Article 12 of the Constitution of India.

7. We may observe that, what the petitioner is asking us to do as noted above would fall within the realm of disputed facts. It is trite law that such

disputes are not to be entertained by a writ court exercising its extraordinary jurisdiction under Article 226 of the Constitution of India. This is more particularly when there are alternate remedies in law available in such cases of civil disputes including filing of a civil suit.

8. In the above context, we may gainfully refer to a judgment of the Supreme Court in the case of **Roshina T. vs. Abdul Azeez K. T.**¹, the relevant portion of the judgment reads thus :-

“14. It has been consistently held by this Court that a regular suit is the appropriate remedy for settlement of the disputes relating to property rights between the private persons. The remedy under Article 226 of the Constitution shall not be available except where violation of some statutory duty on the part of statutory authority is alleged. In such cases, the Court has jurisdiction to issue appropriate directions to the authority concerned. It is held that the High Court cannot allow its constitutional jurisdiction to be used for deciding disputes, for which remedies under the general law, civil or criminal are available. This Court has held that it is not intended to replace the ordinary remedies by way of a civil suit or application available to an aggrieved person. The jurisdiction under Article 226 of the Constitution being special and extraordinary, it should not be exercised casually or lightly on mere asking by the litigant. (Also Mohan Pandey v. Usha Rani Rajgaria [Mohan Pandey v. Usha Rani Rajgaria, (1992) 4 SCC 61] and Dwarka Prasad Agarwal v. B. D. Agarwal [Dwarka Prasad Agarwal v. B.D. Agarwal, (2003) 6 SCC 230].)”

Thus the Supreme Court has clearly held that a regular suit is the appropriate remedy for settlement of dispute relating to contesting property rights, when private persons are involved. Writ jurisdiction ought not to be invoked when the remedy in general law available.

9. We are of the clear opinion that a writ court exercising its extraordinary jurisdiction under Article 226 of the Constitution of India

¹ (2019) 2 SCC 329

cannot act as a civil court. Accepting the petitioner's prayers would tantamount to converting a writ petition into a civil suit, which cannot be countenanced.

10. In light of the foregoing discussion, we are certain that the writ petition is neither maintainable nor entertainable and thus deserves to be rejected. We accordingly pass the following order :-

ORDER

- (i) The petition is dismissed. No Costs.
- (ii) The petitioner is at liberty to take recourse to alternate remedies including that of filing a Civil Suit before court of competent jurisdiction and if he chooses to do so.
- (iii) All contentions of the parties in such proceedings are expressly kept open.

[ADVAIT M. SETHNA, J.]

[G. S. KULKARNI, J.]