

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.14405 OF 2024

Jayprakash Radheshyam Bharadiya ... Petitioner

V/s.

The District Collector and Ors. ... Respondents

Mr. Imtiyaz Khairdi with Mayank Tripathi, Bhooshan Walimbe I.by Ms. Priti Walimbe, for the petitioner.

Mr. Jagdish Aradwad (Reddy) with Ms. Deepti Thorat, for the respondent no. 3

Mr. Nitin Gaware-Patil with Jay Salunke and D. Jain, for the respondent nos. 6 to 8.

CORAM : N.J. JAMADAR, J.

DATE : 21ST APRIL 2025.

Oral Order:

1. Heard the learned counsel for the parties.
2. The challenge in this petition is to an order dated 30th September 2024 passed by the learned Civil Judge, Barshi whereby an application (Exhibit-69) preferred by the petitioner/plaintiff for continuation of the order of temporary injunction passed on an application (Exhibit-46), came to be rejected.
3. By order dated 9th July 2024, the said application (Exhibit-46) was partly allowed and the defendant nos. 6 to 8, were restrained from taking action pursuant to the final development plan and

sanctioned layout plan, dated 27th June 2024, till the joint measurement of Gat Nos. 1188, 1189 and 1310 or for two months, whichever was earlier.

4. Being aggrieved, the defendant nos. 6 to 8 had carried the matter in appeal before the District Judge, Barshi. By a judgment and order dated 4th September 2024, the learned District Judge was persuaded to dismiss the appeal and affirm the order passed by the Trial Court.

5. After the dismissal of the appeal, the plaintiff / petitioner preferred an application (Exhibit-69) seeking continuation of the restraint in terms of the orders on Exhibit-46. The said application (Exhibit-69) came to be rejected by the trial Court observing that the plaintiff had, in fact, obtained the earlier order on the application (Exhibit-46) by resorting to *suggestio falsi* and *suppressio veri*. The Trial Court was also persuaded to impose costs of Rs. 25,000/- on the plaintiff.

6. Being aggrieved, the plaintiff has invoked the writ jurisdiction.

7. Mr. Khairdi, learned counsel for the petitioner, would submit that the Trial Court has transgressed the jurisdictional limits by travelling beyond the scope of the application (Exhibit-69).

8. The Trial Court could have continued the order passed on Exhibit-46 for a further period or declined to continue the said order. However, by the impugned order, the Trial Court has recorded a finding that the said order, Exhibit-46, was obtained by playing fraud

on the Court. The said finding has caused grave prejudice to the petitioner as the various proceedings initiated by the petitioner against the rejection of the application for Nemtana measurement have been dismissed by the authorities on the basis of those uncalled for observations in the impugned order.

9. Mr. Khairdi further submitted that since the trial Court, while partly allowing the application (Exhibit-46), and the Appellate Court, while dismissing the appeal preferred by the defendant no. 6 to 8, have recorded a prima facie finding that the measurement was necessary to resolve the dispute between the parties, the impugned order which takes a diametrically opposite view of the matter cannot be legally sustained. Therefore, the impugned order deserves to be quashed and set aside, and the order passed on the application (Exhibit-46) to restrain the defendants from acting upon the final development plan and sanctioned layout, deserves to be continued.

10. Mr. Gaware Patil, the learned counsel for the respondent, countered the submissions on behalf of the plaintiff. Taking the Court through the averments in the plaint, especially the nature of the suit and the narrow controversy between the parties and the document on record, an endeavour was made by Mr. Gaware Patil to demonstrate that the fraud is evident from the conduct of the plaintiff. Reference was made to the information furnished by the office of the Deputy Director of Land Records about the application preferred for the Nemtana measurement. Attention of this Court was invited to the observation of the learned Civil Judge in another suit instituted by the relatives of the plaintiff wherein also the Trial Court has observed that

the litigation was driven by a desire to stall the development of the property by defendant nos. 6 to 8. In these circumstances, according to Mr. Gaware Patil, the learned Civil Judge was justified in making those observations and rejecting the application.

11. I have given careful consideration to the submissions canvassed across the bar and the material on record.

12. First and foremost, the nature of the order passed by the Trial Court on the application (Exhibit-46) needs to be kept in view. The Trial Court had considered it appropriate to direct the respondents-defendant nos. 6 to 8 not to take action on the basis of final development plan and sanctioned layout till the Gat Nos. 1188, 1189 and 1310 were jointly measured or for a period of two months, whichever was earlier.

13. Evidently, the order passed by the Trial Court was not in the nature of a blanket order which was to enure till the final disposal of the suit. If the plaintiff was aggrieved by the said order to the extent the application was allowed partly and the restraint was put for a limited duration, the proper course for the plaintiff was to file an appeal against the said order. The fact that the Appellate Court dismissed the appeal preferred by defendant nos. 6 to 8 does not advance the cause of the submission on behalf of the plaintiff as the Appellate Court confirmed the order passed by the Trial Court as at that moment the order had the potentiality to balance the equities between the parties.

14. Secondly, the observations of the Trial Court in the

impugned order regarding the alleged fraud in obtaining the order on the application (Exhibit-46) are required to be considered in a correct perspective. The impression that the Trial Court gained on the basis of the developments which had taken place, especially, on the basis of the correspondence addressed by the office of DDLR, may be said to be debatable, in the sense that, a different view on the said matter can be taken. However, the ultimate order passed by the Trial Court in rejecting the application (Exhibit-69) does not suffer from any infirmity as the first order (Exhibit-46) was essentially an order in the nature determining the matter of moment. The plaintiff could not have, thus, sought extension of the said order.

15. Thirdly, the Court is informed that, subsequently, the applications preferred by the plaintiff for measurement have been rejected by the authorities, and the appeals preferred thereagainst are pending. Thus, at this stage, the prayer of continuation of the restraint in terms of the order on application (Exhibit-46), cannot be countenanced.

16. The concern of Mr Khairdi that the observations of the Trial Court with regard to the fraud, allegedly practiced by the plaintiff, would continue to cause prejudice to the petitioner/plaintiff, can be addressed by giving liberty to the petitioner/plaintiff to approach the trial Court to expunge the observations as regards the alleged fraud played by the plaintiff in obtaining the order on the application (Exhibit-46) by satisfying the Trial Court that the plaintiff/petitioner had raised the contentions and made submissions before the Court, on the basis of the facts as then obtained.

17. In the event such an application is filed, the trial Court shall decide the same on its own merits and in accordance with law, after providing an opportunity of hearing to the concerned parties.

18. All contentions of all the parties in that regard, are kept open for consideration.

19. Subject to the aforesaid clarification, the petition stands dismissed.

(N.J. JAMADAR, J)