

MJ Jadhav

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 15353 OF 2024**

The Tata Power Company Ltd. ... Petitioner
Vs.
Sunil Vijay Tingare ... Respondent

Mr. Girish Godbole, Senior Advocate a/w Bhushan Deshmukh a/w
H. N. Vakil a/w Samkit Shah i/b Mulla & Mulla and Craigie Blunt &
Caroe for the Petitioner.

Mr. Atul Damale, Senior Advocate i/b Amit Ashok Gharte for the
Respondent.

CORAM : GAURI GODSE, J.

DATED : 2nd SEPTEMBER 2025

ORDER:

1. This petition is filed by the plaintiff to challenge the concurrent orders dismissing an application for temporary injunction restraining the defendant from disturbing the plaintiff's possession over the suit property and from carrying out any further construction. The prayer for temporary injunction is also for not creating any third party interest in the suit property. The suit is filed by the petitioner for an injunction restraining the defendant from erecting any illegal structure in the suit property or forcefully dispossessing the plaintiff. The prayer is also for removing illegal encroachment on the suit property. The trial Court dismissed the

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application for interim injunction and in an appeal preferred by the petitioner (plaintiff), the trial Court's order is confirmed.

2. Learned senior counsel appearing for the petitioner submits that since the dispute is between the adjoining land owners, the Court ought to have considered the petitioner's prayer for remanding the matter to the trial Court for the purpose of carrying out joint survey by appointing Court Commissioner. He submits that the petitioner is owner of a large area of 289.2610 hectares of land bearing Survey No.15/1. According to the petitioner, the respondent who is owner of adjoining Survey No.8 has encroached upon 3000 square metres on Survey No.15/1. The encroached area is described in Schedule II of the plaint and the attached map. Learned senior counsel for the petitioner, therefore, submits that it is necessary to ascertain whether the alleged construction is on the petitioner's land or on the adjoining land of the defendant. Hence, the only remedy is to carry out a joint survey to find out the location of the alleged encroachment. To support his submissions, learned senior counsel for the petitioner relies upon the decision of this Court in the case of ***Vasant Prabhu Vs. Xalinibai Borcar alias Shalinibai Borkar***¹.

3. Learned counsel for the respondent submits that the defendant has denied the allegation of encroachment and

¹ 2014(5) Mh.L.J.

contended that the defendant's construction is on his property bearing survey no.8. He therefore submits that the relief of injunction cannot be granted at the interim stage, as the rival contentions would require evidence and the dispute can be decided only in a full-fledged trial. He submits that the decision relied upon by the learned senior counsel for the petitioner arises out of a final decision after recording evidence. He, therefore, submits that the propositions would not apply at the interim stage.

4. I have perused the papers of the petition. The prayer in the suit is for removal of encroachment from the petitioner's Survey No.15/1. The defendant contends that the structure is on his property Survey No.8. Thus, the dispute in the suit is on the factual aspect as to whether the defendant's construction is on the petitioner's property or on the defendant's property.

5. Considering the dispute regarding the adjoining landowners, the parties would always be at liberty to lead evidence supporting their respective contentions. It is also open to the trial Court to order joint survey as held by this Court in the decision of **Vasanat Prabhu**. In the case of **Vasant Prabhu**, the issue decided by the Court was after the decree of the trial Court which was set aside by the first appellate Court ordering remand to the trial Court. Thus, this Court confirmed the order of remand which directed a joint survey by the trial Court.

6. In the present case, the suit is pending for framing issues. Hence, at appropriate stage it would always be open for the petitioner to apply for survey of both lands through Court Commissioner. In view of the well settled legal principle, the trial Court would also be at liberty to issue directions for joint survey of the properties.

7. In view of the aforesaid dispute on the factual aspect the reasons recorded by both the Courts in refusing temporary injunction would not require any interference by this Court.

8. I do not find any illegality or perversity in the reasons recorded in the impugned orders. This is not a fit case to exercise discretionary jurisdiction under Article 227 of the Constitution of India.

9. The Writ Petition is, therefore, dismissed.

(GAURI GODSE, J.)