

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 17980 OF 2024

Vivek Singh and Ors. ...Petitioners
Versus
Union of India Through Ministry of Railway and Ors. ...Respondents

Mr. Navroz Seervai a/w Ms. Ferzana Behramkamdin and Ms. Bharti Bhansali and Ms. Rupa Shaw i/b. FZB & Associates, for the Petitioners.
Mr. Suresh Kumar a/w Jyoti Yadav, Santosh Kumar Pandey (Engineer Worker Borivali), for the Respondent No.1 and 2.
Mr. Atharva A. Dandekar (Mumbai Rail Vikas Corporation) for Respondent No.3.
Mr. A.I. Patel, Addl. G.P. a/w Ms. T.J. Kapre, AGP for Respondent No.5 – State.

**CORAM : G. S. KULKARNI &
ADVAIT M. SETHNA, JJ.**

DATE : 11 FEBRUARY 2025

P.C.:

1. Leave to amend to implead the State of Maharashtra through the DSLR/Deputy Superintendent of Land Records, Palghar as a party respondent. Amendment to be carried out forthwith. Re-verification is dispensed with. Mr. Patel, learned Addl. GP waives service on behalf of the added respondent.
2. We have heard Mr. Seervai, learned Senior Counsel for the petitioner, Mr. Suresh Kumar, learned counsel for respondent nos.1 and 2 Railways, Mr. Atharva Dandekar, learned counsel for respondent no.3 – Mumbai Rail Vikas Corporation Limited and Mr. Patel, learned AGP for

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the respondent No.5 – State.

3. The petitioners have invoked the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India being aggrieved by the action of respondent nos.1 and 2 to undertake activity of putting up fence/construction as alleged on the land on the disputed land. The petitioner claims to be the owner inter alia of salt pan land being Survey No.117 and Survey no.118 situated at Village Umela, Taluka Vasai, District – Palghar. The petitioner has alleged that the respondent/railway is undertaking such works on the petitioner's land.

4. Mr. Suresh Kumar appearing for the respondents submits that petitioner's contention of any alleged construction/putting up fencing, being undertaken on the land belonging to the petitioner viz. Survey No.117 and 118 is not correct. Mr. Suresh Kumar has placed reliance on the reply affidavit filed on behalf of the Railways of Mr. Rahul Chaudhary, Divisional Engineer (Estate/North), Mumbai in opposing the prayers as made in this petition. In paragraph 4 of the affidavit, the deponent has stated that respondent nos.1 and 2 is not averse for a survey to be conducted in the presence of both the parties, while saying that the Railway is undertaking such work only on the Railway's land, and no work is being executed on survey nos.118 of fixing the boundary. The averments to that effect are in paragraph 4 of the reply affidavit which reads thus:-

“4. At the outset it is submitted that dispute is related to the

construction on the land. It is open to the petitioner to get his land surveyed and fix the boundary of his land being survey no. 118, which is adjoining to survey no.116. The survey can be conducted in the presence of both parties. It is further submitted that the railway is doing work only in their own land and nothing is being executed in survey no. 118 and fixing boundary. It was open to the petitioner to apply for survey of his survey no.118. However, the Petitioner chooses to approach this Hon'ble Court. The dispute with regard to land which required investigation cannot be entertained by filing writ petition. However, to be fair being a Government department we have no objection if the Petitioner gets his land measured in Survey No.118 by appropriate authority provided notice of such survey is given to the respondent. The land on which the work is being done is the land which belongs to originally to railway even where the boundary is being put. The land which belongs to railway of survey no.116 is available but at present no work is even done in survey no.116 indicating in the annex plan.”

5. To this effect also a plan is annexed to the reply affidavit. We may also note that the petitioners have annexed certified plans to indicate the boundaries of their property. Also, the petitioners rely on a communication dated 18 April 2022 of the Vasai Virar Municipal Corporation, addressed to the petitioner in regard to part of the land being acquired by the said Municipal Corporation.

6. Having noted the conspectus of the case, we observe that the limited issue before the Court, in the present proceeding, is whether the Railways [respondent nos.1 and 2] are carrying out any works on the petitioner's land being survey no.117 and 118 situated at Village Umele, Taluka Vasai, District: Palghar and/or such work is undertaken on the land belonging to the Railways.

7. As fairly pointed out on behalf of the petitioners by Mr. Seervai, a survey/measurement of the relevant land be undertaken by respondent

no.5 – DILR who would undertake the demarcation of the areas of the appropriate survey numbers so that the controversy can be put to an end. This can be without prejudice to the rights and contentions of the parties. Mr. Suresh Kumar is not averse to such course of action.

8. Thus, both the parties in principle agree that a survey at the hands of DILR needs to be conducted, as the dispute is purely on the identification of the land on which such works are being undertaken by the respondents, namely as the petitioners on one hand claiming that the works are on the petitioner's land, and on the other hand, the Railways claiming that work is on Railways land.

9. In the aforesaid circumstances, we are of the opinion that it would be in the interest of justice that the petition is disposed of by directing respondent no.5/DILR to undertake a survey and measurement of survey no.115, 116, 117 and 118 situated at Village Umele, Taluka Vasai, District Palghar, within a period of eight weeks from today. A copy of the survey report be furnished to all the parties.

10. We keep open all contentions of the parties on the survey and any dispute in regard to the respective rights in regard to the lands in question to be agitated by the parties in appropriate proceedings, in the event any dispute so arises after the survey.

11. Ordered accordingly.

12. Let a copy of this order be forwarded for compliance by the learned

AGP to respondent no.5/DILR, Palghar. Respondent no.5/ DILR shall issue an advance notice of minimum 48 hours to the parties, of the date and time on which the survey/measurement would be undertaken, so that the parties can remain present, on the time and date as may be fixed, for the survey and measurement.

13. Needless to observe that parties shall provide necessary documents to the survey team.

14. At this stage, we are informed by Mr. Suresh Kumar that a formal application for survey is already filed on behalf of the railways and which is yet to be acted upon. Be that as it may, we also permit the petitioner to file a formal application with the DILR within a period of one week from today.

15. The fees/charges of the DILR shall be borne by the parties in equal proportion.

16. Disposed of in the aforesaid terms. No costs.

[ADVAIT M. SETHNA, J.]

[G. S. KULKARNI, J.]