The General Manager, Central Railway and The Senior Divisional Engineer, (Cord), Central Railway Vs Mehmooda Shikshan and Mahila Gramin Bahuuddeshiya Sanstha

Court: Bombay High Court (Nagpur Bench)

Date of Decision: March 12, 2010

Acts Referred: Constitution of India, 1950 â€" Article 226, 227
Maharashtra Land Revenue Code, 1966 â€" Section 143

Citation: (2010) 6 BomCR 828 : (2010) 3 MhLj 455

Hon'ble Judges: B.P. Dharmadhikari, J

Bench: Single Bench

Advocate: A.M. Gordey and N.P. Lambat, for the Appellant; K.H. Deshpande and Masood Shareef, for the Respondent

Judgement

B.P. Dharmadhikari, J.
Petitioners before this Court are the defendants in RCS No. 456/2009 and have invoked Article 226 r/w Article

227 of the Constitution of India to challenge the reversing judgment dated 21/1/2010 delivered by the 4th Additional District Judge, Nagpur in

MCA No. 230/2009 whereby it has granted temporary injunction to respondent plaintiff. The petitioners, their agents, servants etc. are restrained

from obstructing the respondent in using suit road by this appellate judgment. Considering the nature of dispute, I have heard parties finally at the

stage of admission itself with their consent by making Rule returnable forthwith.

2. On or about 16/6/2009 present respondent filed RCS No. 456/2009 praying for permanent injunction to restrain defendants i.e., petitioners

from obstructing their user of suit road. Said road is stated to be situated east west on shiv-dhura of land bearing survey No. 348 of Mouza

Godhani, Tahsil Nagpur Rural, District-Nagpur. They relied upon the order dated 26/2/2009 passed by the Tahsildar permitting them to use road

constructed over lands bearing survey No. 347 & 348 of Mouza Godhani as an approach road to their college. Pursuant to Tahsildar"s order,

according to them the road has been constructed on shivdhura of land survey No. 348. They pleaded obstruction by defendants on 15/6/2009 by

trying to place the barricades and trying to damage that road. Hence they filed the suit for permanent injunction and declaration along with prayer

for grant of temporary injunction to continue that user un-obstructed by the defendants. The petitioners defendants opposed the suit and temporary

injunction by pointing out that the shivdhura does not reach up to the land of plaintiff and they were trying to encroach on portion ad-measuring

300 meters in length and 10 meters in width of defendants land for approaching their own property. They pointed out that those lands were

acquired for railways on 27/1/1913 and map of lands belonging to them at village Godhani and Lonara is duly approved by the District Inspector

of Land Records on 2/3/2002.

3. Trial Court has found prima facie case in favour of plaintiff as it noted that Tahsildar has u/s 143 of the Maharashtra Land Revenue Code, 1966

allowed it to use Lonara-Godhani shivdhura as approach road and said order was not challenged by the defendants. However, it noted the case of

the defendants that on southern side of the plaintiff''s property the defendant Railway''s property was situated and noted that Tahsildar has not

granted any right over it. It has found contention of plaintiff that on southern side there existed a Shivdhura of survey No. 348 belonging to State

Government baseless in view of the documents placed on record by plaintiff. It relied upon some letters written by or for plaintiff'' admitting

Railway lands on its southern side and found that it separated Lonara-Godhani shivdhura and land of plaintiff. Therefore according to it, no balance

of convenience lay in favour of the plaintiff but it tilted in favour of defendants. It also relied upon the affidavit of the defendants and photographs

filed by it to prima facie conclude availability of 40 feet wide alternate road to plaintiff from Koradi post till its main gate. The photographs and

affidavit were found un-rebutted. It therefore did not find possibility of irreparable loss in plaintiff''s favour. In impugned judgment dated

21/2/2010, the Appellate Court noted that claim of plaintiff was only in relation to prevention of obstruction by defendants to use of suit road on

shivdhura between Khasara or survey No. 347 and 348. It found that admittedly these lands do not belong to Railways and hence, defendants

have no right to obstruct user of plaintiff''. It has not accepted the stand of defendants that Shivdhura does not touch the property of plaintiff.

Because of these findings, it has allowed MCA No. 230/2009 filed by the plaintiff against rejection of temporary injunction by the Trial Court and

granted temporary injunction as sought for.

4. Shri Gordey, learned Counsel has argued that Appellate Court did not consider the entire material on record and because of its erroneous

unreasoned conclusion that the land on southern side does not belong to Railways or then shivdhura touched the property of plaintiff'', it fell into an

error apparent and granted temporary injunction to plaintiff/appellant before it. The situation appearing from maps was not seen and the

correspondence looked into by Trial Court is also ignored. The availability of other road and of absence of remedy u/s 143 of Maharashtra Land

Revenue Code in the matter is also not considered by it. He also pointed out change in story by the plaintiff before this Court by raising a new plea

that plaintiff has permission of owner Nandlal Chaurasia for construction and user of the road from his land bearing survey No. 25/1 of Mouza

Lonara. Therefore the Appellate Court has refused to exercise jurisdiction as per law and impugned judgment delivered by it is unsustainable.

5. Senior Advocate Shri Deshpande, states that Survey No. 347 is not the new number of Khasara No. 26 and that the defendants have also

stated that number to be 348. Khasara No. 26 is of mouza Lonara while survey No. 347 and 348 are from Godhani. It is not the case of

defendants that plaintiff has encroached upon khasara No. 26. He relies upon the order dated 26/2/2009 passed by Tahsildar permitting

construction of road on shivdhura and accordingly road has been constructed on survey No. 348 of mouza Godhani which belongs to State

Government. Letter dated 1/4/2009 by Railways is pressed into service to show that it has no concern with khasra No. 347 and 348. To

demonstrate that there is no Railway property on southern side of plaintiff''s land, he has invited attention to relevant revenue records i.e., 7/12

extracts. Other 7/12/extracts are also pointed out to show the lands of plaintiff, land recorded as Zudpi Jungle i.e., forest, State Government and of

khasara No. 332 to show that it is Railway land. He states that Trial Court as also Appellate Court has found prima facie case in plaintiff''s favour.

As it is use of Road, the Appellate Court has rightly looked into convenience of citizens, students etc. and its findings on balance of convenience

and possibility of irreparable loss do not call for any interference. Limited scope of jurisdiction available to this Court in such matters is being

pointed out by relying upon Shamshad Ahmad and Others Vs. Tilak Raj Bajaj (Deceased) through LRs. and Others, , M/s. Estralla Rubber Vs.

Dass Estate (Pvt.) Ltd., , Ouseph Mathai and Others Vs. M. Abdul Khadir, , Mrs. Rena Drego Vs. Lalchand Soni, Etc., . According to him

availability of other road is totally irrelevant in dispute of this nature. Appellate Court has considered all material produced before it and as such

there is no jurisdictional error. The suit road is found prima facie not on Railway Land and hence, at this stage, the findings of Appellate Court call

for no interference. The disputed questions can be resolved only after trial and hence writ petition as filed needs to be dismissed.

6. It can not be disputed that basic burden to prove location of suit road is on plaintiff and interference by this Court in its extra ordinary

jurisdiction is possible only if there is a jurisdictional error or perversity by the Appellate Court. The judgment of Appellate Court here is a

reversing judgment. Trial Court though mentions in paragraph 7 of its order that prima facie case is in favour of plaintiff, said finding is based upon

only the fact of an order u/s 143 M.L.R. Code being in its favour. In paragraph 8 it also records that Tahsildar has not passed any order granting

road to plaintiff over land of defendants. It has rejected the case of plaintiff that on southern side of its property there is shivdhura of property

bearing khasra No. 348 which belongs to State of Maharashtra. Then it has considered letter dated 18/12/2007 by then Minister Shri Anis Ahmed

on behalf of plaintiff to the defendants for sanctioning 4 meter wide approach road or passage for access. On 19/1/2008 Divisional Railway

Manager of the defendants sought confirmation of road width required to follow the procedure for grant of license. The next communication on

record is dated 14/5/2008 and in it plaintiff has also mentioned its earlier letters dated 18/12/2007 and 20/3/2008. In this letter road of 3 meters

width is asked for for access. This letter mentions that construction of institute and hostel is coming up adjacent to Railway land. It expressly states

that ""As to the one side there is railway land and to the other side there is the forest land as such there is no approach road for the institute"". It also

mentions that ""Previously we requested you to give us approach road to the west side but now it is changed due to some other reason and it is

now proposed to give the approach road to our institute to the east side. Necessary charges will be born by us as per norms"". On 24/3/2009,

plaintiff'' has written to the defendants that on 25/2/2009 Tahsil office, Nagpur has permitted construction of approach road to institute from

Survey No. 347 and 348 Godhani Railway. On 1/4/2009, defendants have treated the request of plaintiff for for passage road as canceled as

alternative location beyond Railway''s premises are allowed to be used by the Tahsil office. This correspondence directly on the point is used by

Trial Court to answer the points of irreparable loss and balance of convenience against the plaintiff is not even mentioned by the Appellate Court.

The other two findings of Trial Court about no order of Tahsildar granting right over Railway land or then about absence of Shivdhura of

Government on southern side of plaintiff property are not evaluated by the Appellate Court at all. Appellate Court has proceeded as if suit road is

situated on shivdhura of khasara No. 347 and 348 and has held ""admittedly"" khasara Nos. 347 and 348 do not belong to Railways. Its sentence

Admittedly khasara No. 347 and 348 do not belong to railways land is allegedly situated between shivdhura and the Appellant-Plaintiff property,

that does not give right to Railways-Defendants to obstruct the way of Appellant-Plaintiff from Shivdhura"" shows total non-application of mind to

facts on record. Its next sentence also sounds confusing as it observes ""The contention on behalf of Respondent that shivdhura does not touches

the property of Appellant is not acceptable at this stage what to be seen is whether the comparative hardship or convenience, which likely to be

caused to the defendant by granting it"". Its later observation again shows that it held that construction of road on shivdhura situated on khasara

Nos. 347 & 348 was not in dispute and admittedly these khasara Nos. do not belong to Railways. It therefore reiterated that defendants have no

right to obstruct. Thus the material on record is not discussed to arrive at these conclusions and though the view contrary to findings reached by the

Trial Court is reached, no reasons are recorded to show how Trial Court is in error. Whether shivdhura touches the property of plaintiff'' or the

land of the defendants Railways separates both is not even examined in the light of material on record. Thus failure on part of Appellate Court to

discharge obligations cast upon it while writing a judgment of reversal is apparent. Not only this it has avoided to look into plaintiff''s own

documents and the findings to the contrary of the Trial Court. The availability of other road from Koradi Post to plaintiff noted by Trial Court and

its impact while considering the cardinal aspects like possibility of irreparable loss or balance of convenience is not even commented upon by it.

The said judgment and approach is therefore totally unsustainable.

7. Plaint para 6 shows case of plaintiff about road constructed on land bearing survey No. 347 & 348. It is mentioned that pursuant to order of

Tahsildar road is constructed on shivdhura of land bearing survey No. 348. Road is stated to be demarcated by Taluka Inspector of Land

Records (TILR) over shivdhura. Plaint map is also filed by them. Shivdhura is shown by letters ""B-C"" in it on northern side of khasara No. 348

and neither point ""B"" nor point ""C"" is touching the plaintiffs property. It shows that some other lands separate plaintiff''s property from shivdhura.

This finding of Trial Court therefore does not appear to be perverse at least at this stage. Perusal of order dated 25/2/2009 only shows that u/s

143 of MLR Code Naib-Tahsildar has directed TILR to measure shivdhura of survey Nos. 347 & 348 for providing road to plaintiff by fixing the

boundaries. This order does not show that said shivdhura or the proposed road touch or extend up to the property of plaintiff. The order is that

way cryptic and defendants have urged that Section 143 could not have been invoked in present circumstances. However, at interlocutory stage I

do not find it necessary to go into those details. After this order, plaintiff'' has started contending that survey Nos. 347 and 348 are not railway

properties but they vest in state government. Revenue records are being relied upon for that purpose. But then plaintiff'' has not explained its own

applications particularly one dated 14/5/2008 to railway which accept that it has to cross railway land to reach its property whether access be on

eastern or western side. There is unequivocal admission that properties of the plaintiff are situated adjacent to railway property and this position

noticed by Trial Court is ignored by Appellate Court. Naib Tahsildar has not granted way over railway property to plaintiff. Communication dated

1/4/2009 by defendants to plaintiff'' dropping the proceedings for leave to use railway land as road does not accept right of plaintiff''s to use

railway land at all. On the contrary it acknowledges the fact that some other lands are made available to plaintiff by Tahsil office. In the suit as filed

plaintiff has not given surroundings and boundaries of its property. Plaint map as filed also except for showing shivdhura does not show the

property of plaintiff or railway lands. It only tries to capitalize on order of Tahsildar and create confusion. In suit notice dated 15/6/2009 the

plaintiff has stated that road is constructed on land survey No. 348 in one paragraph and on shivdhura in other paragraphs. Basic burden to

disclose true and correct facts is on plaintiff and they have avoided to discharge it. Why proper plaint map showing all boundaries and relevant

boundary markings could not be filed needs to be explained. Absence of boundaries of suit property in plaint also speaks for itself. In view of this

state of affairs, attempt of plaintiff to rely upon revenue records is futile as in the absence of basic pleadings it does not lead anywhere and the

position emerging from correspondence is not clarified by it.

8. New story of consent by Nandlal Chaurasia owner of khasra/gut No. 25/1 to grant 12 meter wide road to plaintiff is introduced for the first time

before this Court. This consent deed filed in High Court is dated 1/10/2007 and it shows that Nandlal has permitted plaintiff to use part of 25/1 to

connect shivdhura on southern side to its own property i.e., plaintiff''s property. This document is neither pleaded nor disclosed earlier but then it

also discloses that plaintiff''s land is not adjacent to or abutting the shivdhura. Land of Nandlal is shown to be separating it from the shivdhura. It is

not the case of plaintiff that it has constructed road on Nandlal''s land and still defendants are obstructing them. Had that been the situation in suit

notice or in police complaints, plaintiff would have definitely come out with it to point out highhandedness of defendants. In that situation they

would not have been required to conceal the boundaries and could have also filed a map with necessary particulars. This new story therefore

instead of helping the plaintiff''s prima facie, causes more damage to it by throwing clouds on its bonafides. Plea that road in dispute is situated in

khasra No. 25 of Nandlal militates with plaint version of the plaintiff'' on record. In brief notes placed before me the plaintiff'' has contended that

khasra No. 26 of mouza Lonara and Khasara Nos. 347 and 348 of mouza Godhani are different lands. The alleged arrangement with Nandlal

shows that he has permitted land from khasara No. 25 adjacent to or parallel to boundary of khasra No. 26 to be used for construction of 12

meter wide road. This document also does not disclose to whom khasara No. 26 belongs, Contention of learned Senior Advocate that location of

road or placement/identification of respective lands and their connection with controversy are disputed questions of facts determination of which

must be left for trial on merits can not help the plaintiff'' at this stage as it has to prove prima facie case. Plaintiff has never come with case that it has

constructed road on private land.

9. The discussion above clearly establishes failure on part of plaintiff to make out prima facie case. It is apparent from reading of entire order of the

Trial Court that it has not found any prima facie case in plaintiff''s favour. The Appellate Court has refused to exercise its jurisdiction and it also

ignored the other road available to the plaintiff. The availability of this other road is not in dispute before me and no arguments about it are

advanced by the respondent/plaintiff. As Appellate Court has failed to consider vital material on record, it finding on balance of convenience and

possibility of irreparable loss are ""no findings"" and also erroneous and unsustainable. Here defendants i.e., petitioners have invoked jurisdiction

under Article 226 as also Article 227 of the Constitution of India.

Shamshad Ahmad and Ors. v. Tilak Raj Bajaj (supra) shows that finding by Appellate Authority as to bonafide requirement is a finding of fact and

it could not have been interfered with or set aside by the writ Court. It states that though powers of a High Court under Articles 226 and 227 are

very wide and extend over all Courts and Tribunals throughout the territories in relation to which it exercises jurisdiction, such powers must be

exercised within the limits of law. The power is supervisory in nature. The High Court does not act as a Court of Appeal or a Court of Error. It can

neither review nor re-appreciate, nor reweigh the evidence upon which determination of a subordinate Court or inferior Tribunal purports to be

based or to correct errors of fact or even of law and to substitute its own decision for that of the inferior Court or Tribunal. The powers are

required to be exercised most sparingly and only in appropriate cases in order to keep the subordinate Courts and inferior Tribunals within the

limits of law. If there is evidence on record on which a finding can be arrived at and if the court has not misdirected itself either on law or on fact,

then in exercise of the power under Article 226 or Article 227 of the Constitution, the High Court should refrain from interfering with such findings

made by the appropriate authorities.

Estralla Rubber v. Dass Estate Pvt. Ltd. (supra) lays down the scope and ambit of exercise of power and jurisdiction by a High Court under

Article 227 of the Constitution of India. The exercise of power under this Article involves a duty on the High Court to keep inferior Courts and

tribunals within the bounds of their authority and to see that they do duty expected or required of them in a legal manner. The High Court is not

vested with any unlimited prerogative to correct all kinds of hardship or wrong decisions made within the limits of the jurisdiction of the Courts or

sub-ordinate or tribunals. Exercise of this power and interfering with the orders of the Courts or tribunals is restricted to cases of serious dereliction

of duty and flagrant violation of fundamental principles of law or justice, where if High Court does not interfere, a grave injustice remains

uncorrected. It is also well settled that the High Court while acting under this Article cannot exercise its power as an appellate Court or substitute

its own judgment in place of that of the subordinate Court to correct an error, which is not apparent on the face of the record. The High Court can

set aside or ignore the findings of facts of inferior Court or tribunal, if there is no evidence at all to justify or the finding is so perverse, that no

reasonable person can possibly come to such a conclusion, which the Court or Tribunal has come to.

Ouseph Mathai and Ors. v. M. Abdul Khadir - (supra) considers Article 227 with Sections 20 and 18 of Kerala Buildings (Lease and Rent

Control) Act (2 of 1965) and states that exercise of superintending jurisdiction of High Court is not permissible in matters to which legislature has

assigned finality under specified statutes. Order of eviction there attained finality after decision of appellate or revisional authority and eviction order

was passed on grounds of arrears of rent u/s 11(2) which became final after expiry of time granted for deposit of arrears of rent by Courts and

authorities under Rent Act. It is held that in proceedings under Article 227 same not being extension of proceedings under Rent Act, High Court

cannot extend time for deposit of arrears of rent unless grave injustice has occurred to a party. Following observations in Rena Drego (Mrs.) v.

Lalchand Soni (supra) are important:

4. According to us, the High Court has traversed far beyond the limit of its supervisory jurisdiction under Article 227 of the Constitution when the

learned single Judge reversed the decree of eviction which was based on findings of facts arrived at by the fact-finding authority upon the evidence

on record. It would have been well for the High Court to remind itself that it was not exercising certiorari jurisdiction under Article 226 of the

Constitution but a supervisory jurisdiction under Article 227 which obliges the High Court to confine to the scrutiny of records and proceedings of

the lower tribunal. By relying on fresh materials which were not before the tribunal, the High Court should not have disturbed findings of facts in

exercise of such supervisory jurisdiction. It is now well nigh settled that power under Article 227 is one of judicial superintendence which cannot be

used to upset conclusions of facts, however erroneous those may be, unless such conclusions are so perverse or so unreasonable that no Court

could ever have reached them. Way back in 1954, a Constitution Bench of this Court, in Waryam Singh and Another Vs. Amarnath and Another,

, has pointed out that the power of superintendence conferred by Article 227 should be exercised ""most sparingly and only in appropriate cases in

order to keep the subordinate Courts within the bounds of their authority and not for correcting mere errors.

10. Following observations of Hon. Apex Court from Wander Ltd. and Another Vs. Antox India P. Ltd., are important here:

14. The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, the appellate court will not

interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to

have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal

of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate court will not reassess the

material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible

on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground

that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial

court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the

trial court"s exercise of discretion. After referring to these principles Gajendragadkar, J. in Printers (Mysore) Private Ltd. v. Pothan Joseph: (SCR

721)

...These principles are well established, but as has been observed by Viscount Simon in Charles Osenton & Co. v. Jhanaton "...the law as to the

reversal by a court of appeal of an order made by a judge below in the exercise of his discretion is well established, and any difficulty that arises is

due only to the application of well settled principles in an individual case".

The appellate judgment does not seem to defer to this principle.

While following the above view in case of an unauthorized structure in Seema Arshad Zaheer and Others Vs. Municipal Corpn. of Greater

Mumbai and Others, , Hon. Apex Court observes:

30. The discretion of the court is exercised to grant a temporary injunction only when the following requirements are made out by the plaintiff: (i)

existence of a prima facie case as pleaded, necessitating protection of the plaintiff"s rights by issue of a temporary injunction; (ii) when the need for

protection of the plaintiff"s rights is compared with or weighed against the need for protection of the defendant"s rights or likely infringement of the

defendant"s rights, the balance of convenience tilting in favour of the plaintiff; and (iii) clear possibility of irreparable injury being caused to the

plaintiff if the temporary injunction is not granted. In addition, temporary injunction being an equitable relief, the discretion to grant such relief will

be exercised only when the plaintiff"s conduct is free from blame and he approaches the court with clean hands.

31. It is true that in cases relating to orders for demolition of buildings, irreparable loss may occur if the structure is demolished even before trial,

and an opportunity to establish by evidence that the structure was authorized and not illegal. In such cases, where prima facie case is made out, the

balance of convenience automatically tilts in favour of the plaintiff and a temporary injunction will be issued to preserve status quo. But where the

plaintiffs do not make out a prima facie case for grant of an injunction and the documents produced clearly show that the structures are

unauthorized, the court may not grant a temporary injunction merely on the ground of sympathy or hardship. To grant a temporary injunction,

where the structure is clearly unauthorized and the final order passed by the Commissioner (of the Corporation) after considering the entire material

directing demolition, is not shown to suffer from any infirmity, would be to encourage and perpetuate an illegality. We may refer to the following

observations of this Court in M.I. Builders (P) Ltd. v. Radhey Shyam Sahu made in a different context: (SCC p.529, para 73)

This Court in numerous decisions has held that no consideration should be shown to the builder or any other person where construction is

unauthorized. This dicta is now almost bordering the rule of law. Stress was laid by the appellant and the prospective allottees of the shops to

exercise judicial discretion in moulding the relief. Such a discretion cannot be exercised which encourages illegality or perpetuates an illegality.

Unauthorized construction, if it is illegal and cannot be compounded, has to be demolished. There is no way out. Judicial discretion cannot be

guided by expediency. Courts are not free from statutory fetters. Justice is to be rendered in accordance with law. Judges are not entitled to

exercise discretion wearing the robes of judicial discretion and pass orders based solely on their personal predilections and peculiar dispositions.

Judicial discretion wherever it is required to be exercised has to be in accordance with law and set legal principles.

32. Where the lower court acts arbitrarily, capriciously or perversely in the exercise of its discretion, the appellate court will interfere. Exercise of

discretion by granting a temporary injunction when there is ""no material"", or refusing to grant a temporary injunction by ignoring the relevant

documents produced, are instances of action which are termed as arbitrary, capricious or perverse. When we refer to acting on ""no material

(similar to ""no evidence""), we refer not only to cases where there is total dearth of material, but also to cases where there is no relevant material or

where the material, taken as a whole, is not reasonably capable of supporting the exercise of discretion. In this case, there was ""no material"" to

make out a prima facie case and therefore, the High Court in its appellate jurisdiction, was justified in interfering in the matter and vacating the

temporary injunction granted by the trial court.

In present facts the Appellate Court has not considered entire material on record though it is relevant and has not appreciated the findings of the

Trial Court. It has overlooked facts apparent on record and has recorded findings contrary to those of Trial court without recording any legally

sustainable reasons therefore .It has therefore to be held that there is refusal to apply mind and to decide as required by law on its part. Wrongful

approach on part of Appellate Court has resulted in denial to the defendants (present petitioners) the consideration of their case as per settled law.

The so called findings recorded by it are perverse. Petitioners here have vide grounds (A), (B), (C), (H) and (M) taken necessary grounds and

prayer is not only to quash and set aside the impugned appellate judgment but also to dismiss appeal preferred by the respondent and to issue

appropriate directions and orders for that purpose. This mistake and omission can be corrected not only under Article 227 of the Constitution but

also under Article 226 thereof. Before me the perversity of findings and failure to use jurisdiction is not only apparent but has the effect of reversing

the valid and legal order of the Trial Court. It helps the plaintiff who at least for now can not be said to have approached the Court of Law with

clean hands. There is no prima facie case or possibility of irreparable loss or even balance of convenience in plaintiff''s favour. The reversing

judgment dated 21/1/2010 delivered by the 4th Additional District Judge, Nagpur in MCA 230/2009 is therefore liable to be quashed and set

aside.

11. Accordingly said judgment dated 21/1/2010 delivered by the 4th Additional District Judge, Nagpur in MCA 230/2009 is quashed and set

aside. Order dated 19/9/2009 passed below Exh. 5 by Joint Civil Judge, Sr. Div. Nagpur in RCS No. 456/2009 rejecting temporary injunction to

respondent plaintiff is hereby restored. Writ petition thus stands allowed by making Rule absolute in these terms. Costs of writ petition quantified at

Rs. 3000/- be paid by respondent to petitioners.

12. At this stage Shri Shareef, learned Counsel for the respondent states that as road is already constructed, the order passed today should be

stayed for a period of four weeks. Shri Lambat, learned Counsel for the petitioner opposes the request. However, in the interest of justice, status

quo as on today is granted for a period of four weeks. This order shall cease to operate automatically thereafter.