



Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 12225 OF 2024

1. **Raptakos, Brett & Company Limited**
A Company incorporated under the provisions of Indian Companies Act 1913, having its corporate office address at 21/A, Mittal Tower, 210, Nariman Point, Mumbai – 400 021, India,
and having its factory site at:
01st, Pokharan Road, Shastri Nagar, Thane (West), Thane, Maharashtra 400606.
Through Its Authorized Representative/ Sr. Vice President
Mr. Dinesh R. Mishra
2. **Mr. Dinesh R. Mishra**
Sr. Vice President (Corporate, Finance, Audit & Legal) of Raptakos, Brett & Company Limited, having his office at 21A, Mittal Tower, 210, Nariman Point, Mumbai – 400021.

...PETITIONERSSHEPHALI
SANJAY
MORMAREDigitally signed
by SHEPHALI
SANJAY
MORMARE
Date: 2026.09.22
17:59:22 +0530**~ versus ~**

1. **The Joint Commissioner of Police,
Thane City,**
Near Kalawa Bridge, Kharkar Alley,
Thane (West), Maharashtra – 400 601.
2. **The Deputy Commissioner of Police,
Thane City Zone-V**
At 1st Floor, Wagle Estate,
Kasarwadavli Police Station,

Thane, Maharashtra 400 610.

3. **Commissioner of Police, Thane**
Near Kalawa Bridge, Kharkar Alley,
Thane (West), Maharashtra – 400601.
4. **Senior Police Inspector,**
Vartak Nagar Police Station,
Vartak Nagar, Thane,
Maharashtra – 400606.
5. **Hubtown Ltd.**
(Formerly Akruti Builders),
A public limited company having its
Registered office at Ramkrishan
Chemburkar Marg, Next to Fine Arts
Society, Posta Colony,
Mumbai – 400 071.
6. **Bhagwan Ningappa Devkate**
Age: Adult, having his address at
Flat No. 4, Milind Society, Opposite
Raymond Ltd., Pokhran Road No. 1,
Thane (W) – 400 606.

Alternative address at:

Flat No. 103, B-2, Chhabhaiya's
Vihang Garden, Pokhran Road No. 1,
Opposite Raymond Ltd.,
Thane – 400 606.
7. **Hubtown Greenwoods A Co-op. Hsg Ltd**
Having its address at Pokharan Road
Number 1, next to Apana Bhandar,
Jay Jaywanti Society, Vartak Naka,
Thane West, Thane,
Maharashtra 400606.
8. **Hubtown Greenwoods B Co-op. Hsg Ltd**
Having its address at Pokharan Road
Number 1, next to Apana Bhandar,
Jay Jaywanti Society, Vartak Naka,

Thane West, Thane,
Maharashtra 400606.

9. Hubtown Greenwoods C Co-op. Hsg Ltd

Having its address at Pokharan Road
Number 1, next to Apana Bhandar,
Jay Jaywanti Society, Vartak Naka,
Thane West, Thane,
Maharashtra 400606.

10. Hubtown Greenwoods D Co-op. Hsg Ltd

Having its address at Pokharan Road
Number 1, next to Apana Bhandar,
Jay Jaywanti Society, Vartak Naka,
Thane West, Thane,
Maharashtra 400606.

11. Hubtown Greenwoods E Co-op. Hsg Ltd

Having its address at Pokharan Road
Number 1, next to Apana Bhandar,
Jay Jaywanti Society, Vartak Naka,
Thane West, Thane,
Maharashtra 400606.

12. Hubtown Greenwoods F Co-op. Hsg Ltd

Having its address at Pokharan Road
Number 1, next to Apana Bhandar,

Jay Jaywanti Society, Vartak Naka,
Thane West, Thane,
Maharashtra 400606.

13. Purple Carrot Food Curators LLP

Having its address at 12th Floor,
Dev Corpora,
Near Cadbury Company,
Near Khajiana E.e. Highway,
Khopat, Thane,
Maharashtra, India, 400601.

14. State of Maharashtra

Through Govt pleader,
Appellate Side, High Court Bombay.

...RESPONDENTS

APPEARANCES

For the PETITIONERS	Mr Rahul Narichania, Senior Advocate , with Mr Sidharth Chabbria & Simran Wagle, i/b Uma Kshirsagar Wagle.
For Respondent State	Ms Shruti D Vyas, Addl GP , with AR Deolekar, AGP.
For Respondent No. 6	Ms Druti Datar.
For Respondent No. 13	Mr Ashish Kamat, Senior Advocate , with Yash Dewal & Ashwin Kulkarni.

**CORAM : SUMAN SHYAM &
ADVAIT M. SETHNA, JJ**

RESERVED ON : 2nd SEPTEMBER 2026.
PRONOUNCED ON : 22nd SEPTEMBER 2026.

JUDGMENT (Per Suman Shyam, J):-

1. The Writ Petitioner No. 1 is a Company incorporated under the provisions of the Indian Companies Act, 1913, and the Petitioner No. 2 is its Vice President (Corporate, Finance, Audit & Legal). The Petitioner No. 1, as the sole Plaintiff, had instituted Regular Civil Suit No. 272 of 2024 before the Court of Civil Judge, Senior Division, Thane, at Thane, seeking a decree of declaration and injunction simpliciter involving the "Suit Property" covered

under Survey No. 217/1 and 217/2 admeasuring about 126 Ares (12623 Sq. Mtrs). The learned Civil Court has granted temporary injunction with a further direction for police assistance to implement the order. The Petitioners have approached this Court by filing this Writ Petition alleging inaction by the Vartak Nagar Police in their failure to provide necessary assistance for implementation of the orders of interim injunction passed by the Civil Court on 29th May 2024, 20th July 2024 and 19th August 2024. The facts and circumstance, giving rise to this Writ Petition, in a nutshell, are narrated hereinbelow for ready reference:

2. The Writ Petitioner No. 1 is a pharmaceutical company having its operational factory in Thane. The said factory is in existence since the year 1959. As per the projections made in paragraph 4 of the Plaint, the Petitioner No. 1 claims to be the owner of the total area of land admeasuring 1055.49.00 Sq. Mtrs. covered by various survey numbers including Survey Numbers 217/1 and 217/2. According to the Petitioner No. 1/ Plaintiff, over the above land, a factory as well as a 105 bed superspeciality exclusive children's hospital named "MRR Children's Hospital" is also standing thereupon. The case of the Petitioner No. 1 is that on

13th April 2024, some unidentified persons had forcibly trespassed upon the land of the Petitioner No. 1, more particularly, the “Suit Property” from the eastern side and started recklessly cutting trees standing thereupon which were geo-tagged. When the security guards and the staff of the Petitioner No. 1 present there tried to stop them, the Respondent No. 6 (i.e. the Defendant No. 2 in the Complaint) had informed the staff of the Petitioners that they were the contractors of the Thane Municipal Corporation (TMC) and were acting under the instructions of the TMC for widening the “*nalla*” flowing through the land. When being opposed, the Respondent No. 6 had threatened them with dire consequences. The Petitioner No. 1, therefore, wrote a letter to the Municipal Commissioner of TMC requesting a legal action to be initiated for illegal felling of trees.

3. On 7th May 2024, at around 10:30 am, the Respondent No. 6 along with his men, broke down the RCC compound wall of the Petitioners from the eastern side and entered the subject property along with JCB bearing registration No. MH 04 DT 3918 and destructed the trees planted on the land. When they were sought to be obstructed by the security guard, staff and officers of the

Petitioner No. 1-Company, the Respondent No. 6 and his men had pelted stones on them and also threatened them with dire consequences by claiming that he is a close aid of the local MLA and, therefore, cannot be stopped by anyone. On 7th May 2024 itself the Petitioner No. 1 made a complaint before the police about the incident. However, the police did not take any action against the Respondent No. 6 and his men, who had illegally demolished the RCC compound wall of the Petitioners and had cutdown the trees standing thereupon. Since the letters written to the TMC as well as police authorities failed to evoke any response, the Petitioner was compelled to approach the Court of Civil Judge Senior Division, Thane, by filing Civil Suit No. 272 of 2024 seeking the following reliefs:

“A) It be ordered, decreed, and declared that the claim of the Defendants individually or jointly or through their representatives or of their persons of ownership over the suit property/said property is illegal and unlawful;

B) It be ordered, decreed, and declared that the action of the Defendants to make attempts to encroach and enter upon the suit property, cutting plants and conserved trees and partially demolishing the RCC compound wall of the Plaintiff is illegal and therefore direct the Defendants and their representatives and/or persons, entities claiming through them individually or jointly to cease from and desist committing the same in future;

C) The Hon'ble Court may pass an order of Permanent injunction restraining the Defendant and all other persons

claiming through or under them, including their persons, entities, employees, agents, associates, and representatives:

i. from entering into the suit property or the said property of the Plaintiff Company, in any manner whatsoever;

ii. from resorting to any kind of acts, deeds, or any sort of coercive activity including obstructing the security, staff and officers of the Plaintiff Company or its unit of MRR Children Hospital from protecting and safeguarding its property more particularly the suit property.

D) Interim and Ad-interim reliefs in terms of the above prayers may be granted by this Hon'ble Court till the adjudication of the Suit:

E) Cost of constructing the compound wall and also the cost of replacing the 20 numbers of conserved trees be provided for.

F) Cost of the Suit be provided for.

G) Any other and favorable order or relief in favor of the Plaintiff herein be passed in the interest of justice.”

4. In the aforesaid Suit, the Plaintiff had also filed an application for temporary injunction. On 29th May 2024, the 2nd CJSD, Thane, who was acting as the in-charge of the Vacation Court on that day, by taking note of the colour printouts of the photographs produced by the Plaintiff/Petitioner to show that construction was going on a day-to-day basis over the suit property, had passed an order directing the Defendant No. 2, i.e., Respondent No. 6 to maintain *status-quo* till 10th June 2024, i.e.,

the next date fixed in the Suit. The order dated 29th May 2024 is reproduced hereinbelow:

“Heard Ld. Advocates for plaintiff and defendant no.1. On perusal of record and proceeding, it reveals that the defendant no.2 has not appeared despite due service of summons on 17/05/2024. The plaintiff is seeking relief for ad- interim status-quo by way of the instant application contending all the grounds against the defendant no.2 only. An affidavit is annexed with the application. According to it, the defendant no.2 is day by day encroaching on the suit property survey no.217 by not appearing before the court. If it is not restrained, it would finish the construction and encroach further land. It reveals from record that my Ld. Predecessor did not incline to grant ex-party ad-interim status-quo. She has also not granted status-quo on 21/05/2024 with the observations that there was no extraordinary emergency for granting the status-quo. She has directed both the parties to argue on Exh.5 on next date and kept the matter on today's board.

2. This court is acting as in-charge vacation court and therefore, it is not expected to take the final hearing on an application for temporary injunction (Exh.5), to which the regular court is expected to give full and final considerations. The plaintiff has produced on record photographs coloured prints dated 27/05/2024, 28/05/2024 and 29/05/2024. It reveals that the construction is going on, on day to day basis over the suit property. It is the basic principle of granting the temporary injunction to maintain the status-quo of the suit property until adjudication of the lis between the parties.

3. Since, this court is in-charge court and vacation period would come to an end after 12 days, therefore, it is necessary to keep the matter before the regular court more particularly on 10/06/2024. Ex-parte is yet to be passed against the defendant no.2. Considering the day to day construction going on over the suit property, it would be direct the defendant no.2 to maintain status-quo till 10/06/2024. Accordingly, the defendant no.2 shall maintain the status-quo till 10/06/2024.

(Dictated and pronounced in Open Court.)

Date.29.05.2024

A. C. Doiphode)
I/C 2nd CJSD,Thane.”

5. On 20th July 2024, the 3rd Joint CJSD, Thane had passed a further order, the operative part of which, is reproduced hereinbelow:-

“1] The application Exh. 44 is allowed.

2] Defendants no. 3 to 9 are restrained from entering and carrying out any civil works by using any machinery like JCB, Earth movers, Dumper, Pocklain, hydrolic and cement mixer upon the suit property till next date.

3] P. I. of Vartak Nagar Police station be informed about providing police aid to Plaintiffs for implementation of the order of stopping the alleged construction work, on payment of necessary bhatta for the same by plaintiffs.

4] Plaintiff to comply as per Order XXXIX Rule 3 of Civil Procedure Code.”

6. According to the Petitioners, in the order dated 20th July 2024, there was a clear direction to the Vartak Nagar Police Station to implement the order of the Court by stopping the alleged construction work. Notwithstanding the same and despite the Petitioners having informed the police, no action was taken by the police in the matter. On the contrary, the Police had replied that “the nature of the present matter is civil dispute”. Situated thus, the Petitioner No. 1 had once again approached the Civil Court seeking further orders of Police assistance. On 19th August 2024, the Court of learned CJSD, Thane, had passed the following order:-

“By this application, the plaintiff sought directions to Vartak Nagar Police Station for compliance of the order passed below Exh. 44 Dt- 20/07/2024. Accordingly Vartak Nagar Police station had to provide police aid to plaintiff. But instead of provide police aid they had sent letter Dt- 04/08/2024 stating that the nature of present matter is civil dispute. Therefore it is necessary to direct them for compliance of order dated 20/7/2024. Hence, the application.

2] Today, also defendant and their counsel are absent when called and not proceeded for further hearing of Exh. 5. Defendants no. 3 to 9 are already restrained vide order Exh. 28 dt. 29/5/2024 and Exh. 44 dt. 20/7/2024 from entering into the suit property and from carrying out any work of construction over the suit property.

3] In spite of the aforesaid orders the construction is going on. Therefore, considering submission police aid is also provided while passing order below Exh. 44. But if officers of Vartak Nagar Police Station is not complying the order, it is again necessary to direct them specifically for providing police aid to plaintiff for stopping of alleged construction work. Hence, the order:

ORDER

Sr. Police officer of Varak Nagar police station is directed to provide police aid to plaintiff for stopping of the alleged construction work, on necessary Bhatta.

Dt- 19/08/2024
Thane

(A.S.Nalge)
3rd Civil Judge S.D., Thane.”

7. On 18th February 2025, the Civil Court had confirmed the earlier orders and disposed of the Interim Application by the following order:

:ORDER:

1. The application at Exh.No. 5 is allowed.
2. Defendants, or any other persons through them including their co-employees,

agents, associates and representatives are hereby restrained from entering into the suit property of the said property of the plaintiff's company.

3. They are also restrained from resorting to any kind of acts, deeds or any sort of coercive activity including obstructing the security, staff and officers of the plaintiff company or its unit of MRR children hospital from protecting and safeguarding its property.

4. Costs in main cause.”

8. It is the case of the Petitioner that notwithstanding the successive orders passed by the Civil Court, the construction work went ahead unabated and the police did not take any action to stop the construction so as to implement the order of the Civil Court. Hence, this Writ Petition before this Court with the following prayers:-

“(a) That this Hon'ble Court be pleased to issue writ of mandamus or a writ, order or direction in the nature of mandamus or any other appropriate writ, order or direction under Article 226 of the Constitution of India directing the Respondent Nos. 1 to 4 to forthwith give necessary, adequate and appropriate police aid and assistance and implement the Orders dated 29th May, 2024, 20th July, 2024 and 19th August, 2024 passed by the Hon'ble Court of Civil Judge, Senior Division, Thane so as to prevent any encroachment, trespass and illegal construction on the Petitioner No. 1's subject property;

(b) That this Hon'ble Court be pleased to issue writ of mandamus or a writ, order or direction in the nature of mandamus or any other appropriate writ, order or direction under Article 226 of the Constitution of India ordering and directing the Respondent Nos. 1 to 4 to forthwith restrain the Respondent No. 6, his servants, agents and/or any person/s acting through or under him or on his behalf from entering,

trespassing over, encroaching upon and/or carrying out any construction work, building work or any other activity upon the Petitioner No. 1's subject property;

(c) Interim and/or ad-interim relief in terms of prayer (a) and (b) above be granted;

(d) Costs of this Petition may kindly be granted;

(f) Any other just equitable and consequential relief/order may kindly be passed in favour of the Petitioner as this Hon'ble High Court may deem fit and proper in the interest of justice.”

9. After taking note of the projection made in the Writ Petition, this Court had passed an order dated 30th August 2024 *inter alia* directing the Vartak Nagar Police Station to ensure that “all construction activities on the suit property are stopped forthwith” and to also ensure that machinery like JCB, Earth movers, Dumper, Poclain, hydraulic and cement mixer lying upon the suit property is forthwith removed. By the order dated 30th August 2024, this Court had further directed the Vartak Nagar Police Station to ensure that Respondents Nos. 6 to 13, either through their agents, servants and/or any person(s) acting through or under them or on their behalf, shall not enter, trespass, encroach upon and/or carry out any construction work, building work or any of the activity upon the Petitioner No. 1's suit property.

10. It is the case of the Petitioners that when the suit being RCS No. 272 of 2024 was filed on 9th May 2024, the illegal construction had not yet begun but only forcible trespass, tree cutting and demolition of wall had taken place. The illegal construction upon the suit property, according to the Petitioners, began after the filing of the suit.

11. The stand of the contesting Respondents/ defendants is that no construction is being undertaken upon the “suit property” and the construction is being carried out upon the land of the defendants based on permission granted by the statutory authorities. The contesting Defendant(s) has/have thus, categorically denied that any construction is being carried out over the land of the Petitioner No. 1, as has been claimed.

12. Mr. Rahul Narichania, learned Senior Counsel for the Petitioners, by referring to the material on record, submits that in view of the categorical order passed by the Civil Court, it was incumbent upon the police to implement the court order. However, instead of doing so, the Vartak Nagar Police has ignored the order of the Civil Court and allowed the construction to continue merely because the Respondent No.6 is associated with a powerful

politician from the ruling party. Situated thus, the Petitioners did not have any alternative under the law but to approach this Court by filing the present Writ Petition.

13. Contending that as per the law laid down by the Hon'ble Supreme Court in the case of *Tayabbhai M. Bagasarwalla & Anr. Vs. Hind Rubber Industries Pvt. Ltd.* reported in AIR 1997 SC 1240, an order of the court must be complied with even if it is subsequently found that the same was without jurisdiction. The learned senior counsel for the Petitioners has further argued that the stand of the police that the matter is in the "nature of a civil dispute" is nothing but an excuse not to implement the Court's order on account of the political influence exerted upon the police at the instance of the Respondent No.6. Therefore, unless the Writ Court issues directions to the police to implement the Court's order, serious injury will be caused to the interest of the Petitioners.

14. By referring to the interim order dated 30th August 2024 passed by this Court in the present petition, Mr. Naricharia has further argued that taking note of the coloured photographs produced by the Petitioner showing that the construction activities are still going on, this Court has passed stringent order/directions

as a result of which the construction has stopped. Therefore, the present is a fit case whereby, the order dated 30th August 2024, be made absolute pending disposal of the Civil suit.

15. Resisting the above arguments advanced on behalf of the Petitioners, Mr. Kamat, learned senior counsel representing the Respondent No. 13 has questioned the maintainability of the Writ Petition by contending that in view of the pendency of the Civil Suit, the Writ Petition would not be maintainable in the eyes of law inasmuch as, even assuming that the claim of the Petitioners is correct, even then, the Code of Civil Procedure provides the requisite mechanism for the Petitioners/Plaintiff to seek remedy before the Civil Court.

16. By referring to Order VII Rule 3 of the Code of Civil Procedure, Mr. Kamat has further argued that there is no proper description of the suit property in the plaint or in the injunction application and therefore, the order of “status-quo” passed by the Civil Court is not capable of being implemented. Situated thus, the police has rightly taken a stand that the issue falls within the realm of a civil dispute.

17. It is also the submission of Mr. Kamat that although his client has not assailed the orders dated 29th May 2024, 20th July 2024, 19th August 2024 and 18th February 2025 passed by the Civil Court, yet, that by itself would not give any advantage to the Petitioners since the contesting Respondents/Defendants, more particularly, the Respondent No. 6 has all along maintained that the construction activities are being carried out over the land of the Respondent No.6 and in accordance with the permission granted by the Competent Authority, viz, the Thane Municipal Corporation. Mr. Kamat has emphatically argued that the assertion of the Petitioners/ Plaintiff that constructions has been carried out over the land falling in the “Suit Property” is wholly incorrect and is being stoutly denied by the Respondents. Therefore, the suit of the Petitioners is wholly misconceived and is liable to be dismissed. In view thereof, no relief as prayed for in this Writ Petition is maintainable in law.

18. It is in the aforesaid factual backdrop that this Court is called upon to consider as to whether, the reliefs prayed for in the Writ Petition would be maintainable in the present form. Before considering the prayers made in the Writ Petition we deem it

necessary to point out certain features in the Plaintiff's suit, which in our opinion, would have a relevant bearing in the outcome of this proceeding.

19. It is an admitted position of fact that when the Suit No. 272 of 2024 was instituted, no construction had commenced. At that stage, as per the own showing of the Petitioners/ Plaintiff, only forcible trespass, tree cutting and demolition of the wall had taken place. The Petitioners as Plaintiffs had apparently sought amendment in the plaint to add the Defendants Nos.3 to 9 as parties. However, there is no amendment to the plaint so as to incorporate the factum of alleged illegal construction over the suit property.

20. In paragraph No. 4 of the plaint the Plaintiff/Petitioner No.1 has mentioned that the Plaintiff is the absolute owner of land measuring 1055.49.00 sq. meters falling under different surveys mentioned therein, out of which the land covered by Survey No. 217/1/b covering an area of 77.93.00 sq mtrs under Survey No 217/1 and an area admeasuring 48.30.00 sq. mtrs covered by survey No. 217/2 constitute the "suit property". It is therefore, evident from the projections made in the plaint that although the

Plaintiff claims to be the owner of a much larger area of land, yet, the alleged illegal construction is pertaining to a much smaller area of land i.e., the “suit Property” which apparently forms a part of the larger plot of land. Yet, we find from a reading of the Plaint that the description of the property provided therein is insufficient to precisely identify the land over which the alleged illegal construction is being carried out or for that matter, to ascertain if the same is being carried out over the land under the ownership and possession of the Plaintiff.

21. It is to be noted herein that Order VII Rule 3 of the Code of Civil Procedure (CPC) provides that where the subject matter of the suit is immovable property, the plaint should contain a description of the property sufficient to identify it and in case such property can be identified by boundaries or numbers in a record of settlement or survey, the plaint shall specify such boundaries or numbers. Therefore, it would not be enough to provide some description of the property but the description must be sufficient to clearly identify the disputed property i.e. the “suit property”. It is only then that an order of temporary injunction passed by the court can be effectively implemented.

22. It is no doubt correct that the Plaintiff does mention the area of land and the corresponding Survey numbers of the “suit property” and there is also a sketch map attached to the plaint. However, the same, in our opinion, are not sufficient for this Court to arrive at a conclusion that the alleged illegal construction is being carried out over the land under the possession of the Plaintiff. The coloured photographs produced by the Petitioners/Plaintiff do go to show that some construction activities are going on over the land but the same also, in our considered opinion, does not furnish conclusive evidence of the fact that the construction is being carried out over the land of the Plaintiff.

23. There can be no quarrel with the proposition that an order passed by the competent court of jurisdiction must be complied with at all costs. However, it must also be borne in mind that in case of an order of temporary injunction of this nature, it would not only be necessary to clearly establish the identity of the disputed property but also the fact that the alleged illegal construction activity is going on over such land, which is under the ownership and possession of the Plaintiff. This is more so if there is

a boundary dispute between the owners and occupiers of adjacent lands.

24. We are conscious of the plea raised by the learned senior counsel for the Petitioners that since the Respondents have not challenged the successive order(s) of temporary injunction granted by the Civil Court, hence, those orders have attained finality and, therefore, ought to be complied with by all concerned. However, what cannot be lost sight of is that by filing this Writ Petition, the Petitioners are basically seeking implementation of the order(s) of temporary injunction through police assistance. Therefore, before issuing any Writ Order or Direction, it will be incumbent upon this Court to examine the record and satisfy itself, if the order, in its present form, is capable of being implemented without causing any prejudice to either parties to the pending Civil Suit.

25. From a careful examination of the material on record, we are of the view that the order(s) of temporary injunctions do not contain sufficient particulars of the land over which the construction is being undertaken. The mere claim of the Petitioners/ Plaintiff to the effect that the construction is being carried out over the land of the Plaintiff, which is sought to be

substantiated by producing photographs cannot, in our view, be a valid basis for this court to issue a Writ of Mandamus , in the facts of the present case, directing Police action, more so since, heavily disputed questions of fact are involved in the matter regarding the identity of the disputed land.

26. In so far as the order dated 30th August 2024, passed by this Court is concerned, we find that it was an interim order passed by a coordinate Bench by taking note of some photographs produced by the Petitioners alleging that illegal constructions were being conducted over their land. It is no doubt correct that by the order dated 30th August 2024, this Court has restrained further construction over the “suit property”. However, the order dated 30th August 2024, was based on a *prima facie* satisfaction of the court based on the material brought on record and the restraint order was with regard to construction over the “suit property” and not over the land of the Defendants. It would be noteworthy that while the Petitioners seek confirmation of the order dated 30th August 2024, even the Respondents are not aggrieved by the said Order since the restraint is on construction being carried out over the “suit property”, in respect of which, they do not have any

claim. There is also no prayer from the Respondents to modify that order. Therefore, it is evident that neither party has any grievance as regards the Order dated 30th August 2024, passed by this Court.

27. As noted above, save and except the assertion of the Petitioners, there is nothing on record to establish that the alleged illegal construction is taking place over the “suit property” which is under the possession of the Petitioners. As a matter of fact, whether the alleged construction is being under taken over the land of the Petitioners or not is a disputed question of fact. Such disputed questions of fact cannot be adjudicated in a Writ Petition.

28. Whether a writ of mandamus would lie directing the police authorities to protect the claim of possession of the Petitioner over the property without first establishing his possession in an appropriate Civil Court come up for consideration before the Hon’ble Supreme Court in the case of *P. R. Murlidharan & Ors. Vs Swami Dharmananda Theertha Padar & Ors.* reported in (2006)4 SCC 501, whereby the Hon’ble Supreme Court has made the following observations in paragraph 17.

“17. A writ petition under the guise of seeking a writ of mandamus directing the police authorities to give protection to

a writ petitioner, cannot be made a forum for adjudicating on civil rights. It is one thing to approach the High Court, for issuance of such a writ on a plea that a particular party has not obeyed a decree or an order of injunction passed in favour of the writ petitioner, was deliberately flouting that decree or order and in spite of the petitioner applying for it, or that the police authorities are not giving him the needed protection in terms of the decree or order passed by a court with jurisdiction. But, it is quite another thing to seek a writ of mandamus directing protection in respect of property, status or right which remains to be adjudicated upon and when such an adjudication can only be got done in a properly instituted civil suit. It would be an abuse of process for a writ petitioner to approach the High Court under Article 226 of the Constitution seeking a writ of mandamus directing the police authorities to protect his claimed possession of a property without first establishing his possession in an appropriate civil court. The temptation to grant relief in cases of this nature should be resisted by the High Court. The wide jurisdiction under Article 226 of the Constitution would remain effective and meaningful only when it is exercised prudently and in appropriate situations.”

29. Having held as above, the Hon’ble Supreme Court has made the following observations in paragraph No. 19 of the said decision which is quoted hereinbelow:-

“19. A writ for "police protection" so-called, has only a limited scope, as, when the court is approached for protection of rights declared by a decree or by an order passed by a civil court. It cannot be extended to cases where rights have not been determined either finally by the civil court or, at least at an interlocutory stage in an unambiguous manner, and then too in furtherance of the decree or order.”

30. As has been mentioned above, the present proceeding arises out of an order passed by the Civil Court in a pending Civil Suit. The relief as prayed for in this Writ Petition, if granted in the form of final relief, would have a binding effect on the learned Court

below and hence, would undoubtedly have a relevant bearing in the pending Civil Suit wherein, the property rights over the disputed property is pending adjudication.

31. The Hon'ble Supreme Court has time and again reiterated that a regular Civil Suit is the appropriate remedy for settlement of disputes relating to the property rights between private persons and the remedy under Article 226 of the Constitution shall not be available except where there is a violation of some statutory duty on the part of the statutory authority. The High Court should not allow the constitutional jurisdiction to be used for deciding disputes for which remedy under the general law i.e. civil or criminal is available.

32. In *Mohan Pandey & Anr. Vs Usha Rani Rajgaria (Smt) & Ors.* reported in (1992) 4 SCC 61, and in another recent decisions in the case of *Roshina T Vs Abdul Azeez K. T. & Ors.* reported in 2018 SCC OnLine SC 2654, the Hon'ble Supreme Court has observed that a regular suit is an appropriate remedy for settlement of the disputes relating to the property rights between private persons and the remedy under Article 226 of the Constitution shall not be

available except where a violation of some statutory duty on the part of statutory authority is alleged.

33. Coming to the facts of the present case, the claim of the Petitioners/Plaintiffs that illegal construction is being carried out over the land of the Plaintiff by encroaching upon the same is disputed by the Respondent(s)/Defendant(s). We find that there is sufficient ambiguity as regards the property over which the alleged construction activity is actually going on as a result of which the Police is reluctant to take any action in the matter. As such, the present is not a case of violation of statutory duty of any statutory authority.

34. The successive orders of temporary injunction do not also go to show that the Petitioner No.1/ Plaintiff could, *prima facie* establish its title or possession over the land upon which the construction activity is allegedly being undertaken. Determination of the question of possession, the actual site of construction and identity of the disputed land may require further evidence to be considered by the Court even if it is for the limited purpose of arriving at a *prima facie* satisfaction for granting interim relief. Such evidence can either be furnished by the Plaintiff or the same

can be collected through local investigation by appointing a commissioner.

35. Order XXVI Rule 9 of the CPC permits the Civil Court to make local investigation by issuing a Commission, *inter alia* for the purpose of elucidating any matter in dispute. Rule 10 of Order XXVI which lays down the procedure of the Commissioner, also provides that the report and deposition of Commissioner shall be evidence in the suit and shall form part of the record. Further, the Court or any party, with the permission of the Court, may examine the Commissioner, in the open Court, touching upon any of the matter(s) referred to him or mentioned in the report or as to the manner in which he has made the investigation.

36. It is, therefore, evident that the CPC contains adequate provision for collecting evidence as regards any matter in dispute, through the Court process and during the pendency of the suit by issuing a Commission. Such evidence, can throw light on the critical questions as to which party is in possession of the disputed land and whether any construction is being carried out by the opposite party by encroaching upon the land of the Petitioner No.1 /Plaintiff. Since there is a serious dispute in this case as

regards to the identity of the land over which the construction is being carried out and as to which party is in actual physical possession of such land, an order of “status quo”, passed by the Civil Court, in our view, cannot be effectively implemented unless there is clarity on the above issues. Therefore, we see no reason as to why, evidence on such disputed questions of fact, should not be laid and/or collected by issuing a Commission for conducting a local investigation and a report should not be submitted by such Commissioner to such effect. Such a recourse, in our opinion, would not only be just, fair and reasonable in the facts and circumstances of the case but the same would also permit an early and permanent resolution of the dispute by and between the parties.

37. For the aforementioned reasons, we dispose of this Writ Petition with the following directions:

-O R D E R-

- A) The Petitioner No.1/ Plaintiff is granted liberty to make an application in the Civil Suit No. 272 of 2024 pending before the learned Civil Court for issuing a Commission for local

investigation under Order XXVI Rule 9 of the CPC for elucidating the matter(s) in dispute viz. the issue of encroachment, identity of the disputed land and the actual site of construction, in the light of the observations made herein above, within 4 (four) weeks from the date of uploading this order.

- B) If such an application is made by the Petitioner No. 1 / Plaintiff within the aforesaid time frame, the same be dealt with as expeditiously as possible, preferably within a period of 8 (eight) weeks thereafter and appropriate order be passed therein in accordance with law.
- C) Upon submission of report, if any, by the Commissioner and the evidence brought on record on such behalf, both parties shall be granted reasonable opportunity to examine the Commissioner along with the report.
- D) On completion of the above process, the Ld. Civil Court to pass fresh order on the prayer of temporary injunction made by the Plaintiff, if necessary, by suitably modifying/ altering the order dated 18th February 2025.

- E) Subject to the adherence to the steps delineated above, the interim order dated 30th August 2024, passed by this Court in the present proceeding shall continue to operate until such time the above process is completed and a fresh order is passed by the learned Civil Court on the prayer of temporary injunction made by the Petitioner No.1/ Plaintiff,
- F) There shall be no order as to costs.

(ADVAIT M. SETHNA, J.)

(SUMAN SHYAM, J.)