

:: ORDER BELOW EXH.5 IN RCA NO.23 OF 2023 ::

01. Appellants/Original plaintiffs have filed the present appeal against the judgment & decree passed by the Principal Sr.Civil Judge, Botad in RCS No.142/2018 alongwith filed an application below Exh.5 under order 39, Rule 1 & 2 & order 41, rule-5 of Civil Procedure Code,1908 to get temporary injunction.
02. The short fact of the application are as under :-
 - 2.1 That the appellants/original plaintiffs are the farmers of Bhimdad village, Taluka Gadhada, Dist. Botad and they have been doing farming at Bhimdad since the time of their forefathers and they have been maintaining their livelihood by doing farming work. It has been stated by the appellants that for the purpose of irrigating the agricultural land situated at Bhimdad village S.No.469 and for the purpose of making a well for irrigation, 02 Gunthas of land was demanded from the Government so that Mamlatdar of Gadhada has issued order bearing order No. Land/ Vashi/ 2456/2/1998, dated 25.09.1998 and sanctioned 02 Gunthas of land from the Government waste land for the well. Thus, the appellants at their own expense made a well in the 02 Gunthas land allotted to them by the Government at revenue survey No.469, at Bhimdad village and PVC pipe line of about 15000 feet length is laid from the said

well in the adjacent of farmers and presently water is being supplied from the said well to the adjacent appellants. That the electric connections are also existed and electric connections are obtained by following legal procedure thereto. Thus, the respondents have no any right or authority to take any kind of detention, hindrance or obstruction to carry water for agricultural work through pipeline from 02 Gunthas land. Therefore, for the last one to two years, respondent Nos. 4 to 6 or their subordinate officers are unreasonably,fabricated and misrepresented facts are being harassed and solicited reports are being made for the purpose of discrediting the well. The respondent No.4, irrigation department, Gadhada has issued notice on dated 27.10.2016 to bury the wells under the so-called unauthorized wells. That the appellants have not been given any intimation or opportunity of defence in accordance with the principle of natural justice regarding the so-called orders passed by the collector, Botad. Therefore, the act of the said officials is fundamentally illegal, unjust and against the natural principle of justice. Appellants have stated that they have spent lakhs of rupees on the well and its adjoining pipeline and the trial court has partially allowed an application below Exh.5 and the suit is rejected and if the present appellants do not process of drilling their well before the appeal

then there will be not any meaning of their appeal. Under the above facts, appellants having prima facie case and if the present application is not allowed then they will have to face hardship and their family will be in trouble and it's effect on their life. Thus, the appellants have prayed by way of filing the present application to get temporary injunction till the pendency of the appeal that the respondents do not interfere and obstructed to use the well in the land allotted in 02 Gunthas land of S.No.469 of Bhimdad village by No. Land/ Vashi/ 2456/ 2/ 1998, dated 25.09.1998.

03. Notices were issued to the respondents. The respondents appeared through their learned District Government Pleader & filed objection at Exh.14 and stated that order passed by the learned trial court is just and according to the principle established by the law. That the learned trial court has given its judgment after hearing the respective parties and therefore, the order of the learned trial court should be upheld. That as per the point No.5 of the learned trial court, plaintiffs/appellants have illegally encroached and learned trial court has not committed any serious error in passing order. It has been stated by the DGP that as per the point No.4 of the plaintiffs there is no evidence regarding the notice but the notice given by the defendants has been signed by the plaintiffs themselves. That the appellants have made wells in

the dam which lands belongs to respondents and the same is proved in point No.5. Under the above facts, it is prayed that if the present application is granted then the Government will suffer an incalculable loss, therefore, request to reject the present application of the appellants.

04. Heard the learned advocate for the appellants as well as learned DGP for the respondents. In support of his arguments, learned advocate Mr.Vadodariya has produced citation i.e. (1) Jaipal v State of Haryana and others reported in CR No.8211 of 2018 (O & M).
05. Considering the rival submissions of the parties to this application, following points are required to be framed for the determination of this application.
- 1] Whether the appellants prove that they have prima facie case ?
 - 2] Whether the appellants prove that they would suffer irreparable pecuniary loss if the temporary injunction as sought by them is not granted ?
 - 3] Whether the appellants prove that the balance of convenience is in favour of them ?
 - 4] What order ?
06. Answers to the aforesaid points are as under.
1. In the negative.
 2. In the negative.
 3. In the negative.
 4. As per final order.

:: REASONS ::

Point Nos. 1 to 3 :

07. As all the afore-stated points are interlinked with each other, for the sake of convenience all are discussed herein simultaneously.
08. On perusing the record of learned trial court it transpires that before trial court the original plaintiffs-appellants have filed suit for declaration & permanent injunction alongwith filed an application below Exh.5 to get temporary injunction under order 39, rule 1 & 2 of CPC against the respondents-defendants by praying that the defendants may not cause any disturbance into the suit land i.e. R.S.No.469 at Bhimdad village. It is not in dispute that the application below Exh.5 was partly allowed by the learned trial court. But, on perusing the judgment & decree of the learned trial court of RCS No.142/2018, it transpires that the said suit is decided on merits by the learned Principal Sr.Civil Judge, by its judgment & decree dated 10.04.2023 and the said suit of the plaintiffs was rejected.
09. On perusing the judgment & decree of the learned trial court, it is not in dispute that Mamlatdar of Gadhada has issued order bearing order No.Land/Vashi/2456/2/1998, dated 25.09.1998 and sanctioned 02 Gunthas of land from the Government waste land for the well. So far as the issue No.5 of the learned trial court

which suggests that the Inspector Office Irrigation Department has applied to Land Surveyors (DILR) on dated 15.06.2019 for the verification of the location wells in Bhimdad irrigation Scheme and on perusal two copies of maps prepared by the DILR which shows that three wells are constructed on the line of dam and line of FSL and the above three wells have been constructed in S.No.469, no evidence has been produced by the plaintiffs. Thus, plaintiffs have not successfully proved that they have constructed the wells at the location or area as sanctioned by the Mamlatdarshri. Further, through the Irrigation Department notices have been given to the plaintiffs from the outset that wells have been constructed in dam area and if they have constructed the well in allocated area then from the very beginning, plaintiffs may have produced the documentary evidence, but they have been failed to produce the same. Thus, as discussed above, it does not appear that the plaintiffs have drilled the wells in the land allotted to them for drilling wells and plaintiffs have constructed the wells in the full surface level area of Bhimdad Dam have not complied with the conditions stated as per the allotment order. Thus, this Court is of the view that the Dam is not a personal right but a means of public interest and water supply and the Dam water is drawn from the wells made by the plaintiffs which caused big loss to the

Government. If the present application of stay is granted then the Government will suffer an incalculable loss. Thus, after perusing the evidence which were produced before the learned trial court, this Court is of the view that plaintiffs have failed to prove their prima facie case as well as balance of convenience and irreparable loss caused to them if the present application is dismissed. Hence, this Court has given the answer of point Nos.1 to 3 in negative.

POINT No.4 :-

10. In view of the above discussions, findings arrived, reasons recorded and observations made, the present application is required to be dismissed, therefore, given the answer of this point as per the order. Hence, pass the following order.

:- ORDER :-

1. The present application is hereby dismissed.
2. Looking to the facts and circumstances of the case, there is no order as to cost.

Pronounced in the open Court on this 27th Day of July, 2023.

BOTAD

DATE: 27/07/2023.

Sd./-
(Ms.KIRTIDA RANCHHODBHAI PRAJAPATI)

PRINCIPAL DISTRICT JUDGE,

BOTAD

CODE NO. GJ00391

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