

Court’). The present appellants applied for a review of the order dated 16th March 2022, which has been rejected by the impugned order dated 20th July 2023. Even the order dated 16th March 2022 is under challenge in this appeal.

FACTUAL ASPECTS

2. A few factual aspects will have to be noted. Arbitration Petitions were filed under Section 9 of the Arbitration and Conciliation Act, 1996 (for short, ‘Arbitration Act’) before a Single Judge of the Bombay High Court. One petition was filed by the 1st respondent against one Urvaksh Naval Hoyvoy and others. Taz Naval Nariman and another filed the other petition. Consent terms were filed in the Arbitration Petition preferred by the 1st respondent. It appears that during the pendency of the proceeding of the Arbitration Petition, Urvaksh Naval Hoyvoy was arrested by police based on a First Information Report. In terms of the consent terms dated 28th April 2018, the learned Single Judge passed an order dated 30th April 2018. Further, order dated 10th May 2018 passed by the learned Single Judge records that the process of handing over possession of the suit property by the respondents to the 1st respondent has commenced. The dispute in the Arbitration Petitions related to the lands of Parsi Dairy Farm.

3. The 7th respondent in Arbitration Petition No. 451 of 2018 filed an interim application in the disposed of

Arbitration Petitions more than two years after filing consent terms. It records that the High Court had directed the police to give police protection to the parties for completing the process of handing over possession. A compound wall was to be constructed in terms of the consent terms. The occasion for filing the application arose as, according to the 7th respondent in the Arbitration Petition, local persons obstructed the work of the construction of the compound wall. The learned Single Judge of the Bombay High Court disposed of the interim application by his order dated 12th February 2021. The relevant portion of the said order reads thus:

“2.....
In the application it is stated that in order to safeguard the suit property, the parties tried to build a wall on the suit property and which is in their possession. **On commencement of the work of building the wall, the parties have faced several difficulties and which are enumerated in paragraphs 5(a) to 5(d) of the application. It is stated that local persons have time and again obstructed building of the wall and despite several requests made to the Talasari Police Station, nothing has been done.** It is stated that a wall is being built on the suit property in order to secure the same and though assistance of the police was sought on several occasions, the local

villagers time and again interfered with the building of the said wall and the police have rendered no assistance in that regard.

.....

3.....

4. In these circumstances, it is directed that the police/Tahasildar/Collector/ Gram Panchayat office and all other concerned Government Authorities shall offer all assistance to the applicant and the other interested respondents (respondent Nos.2 to 8) to construct a wall to safeguard the suit property. It is further directed that the local Police Station shall ensure that these directions are strictly complied with and no person is allowed to interfere with the construction of the wall on the suit property.”

(emphasis added)

4. It must be noted here that the persons who had admittedly obstructed the construction of the wall were not parties to the proceedings of either the Arbitration Petition or the interim application.

5. It appears that an application was filed to the Deputy Superintendent of Land Records at Talasari by the 1st respondent and five others for measuring the lands subject matter of the Arbitration Petition situated at village-Varvada, taluka-Talasari, district-Palghar. The Deputy

Superintendent of Land Records, in his letter dated 21st November 2021, informed the 1st respondent that several persons named in the letter had objected to carrying out a survey. The letter records that as objections in writing have been submitted, conducting the hearing and holding an enquiry was necessary. We may note that in the letter, the names of some of the appellants are mentioned in the list of persons who objected to the survey.

6. A very curious step was taken by the 1st and 2nd respondents thereafter. They filed a Writ Petition under Article 226 of the Constitution of India, being Writ Petition No. 2584 of 2022. The grievance in the said Writ Petition was regarding non-compliance with the orders in the aforesaid Arbitration Petition by the government authorities regarding carrying out the survey and construction of the compound wall. The persons who raised objections to the survey were not impleaded in the Writ Petition. In the Writ Petition, a Division Bench directed the District Collector Palghar and the Superintendent of Police, district Palghar, to remain present before the Court through video conference. On 9th March 2022, the Division Bench passed an order. Paragraph 3 of the said order reads thus:

“3. From the annexures to the Writ Petition it appears that this is a clear case of political pressure being exerted on the Government officials like the Collector and

the Superintendent of Police [see pages 252 read with 259D annexed to the Writ Petition]. However, orders of the Court cannot be breached by any individual or organization by creating unrest and the authorities cannot be heard to say that they are unable to tackle such lawlessness. We therefore request the Advocate General to go through the Writ Petition and assist the Court. Stand over to 14th March, 2022, when the Collector and the Superintendent of Police shall remain present.”

7. Mr Dattartraya Tulshidas Shinde, the Superintendent of Police of Palghar district, filed an affidavit dated 14th March 2022 before the High Court. The affidavit notes that when the work of construction of the compound wall in terms of the order in the Arbitration Petition commenced, the local tribals gathered an impression that it was an attempt to illegally dispossess some of them who were declared owners of certain lands. He stated that the tribals insisted that the lands be demarcated before constructing the compound wall. The Superintendent of Police has referred to his meeting held on 11th March 2022 with the learned Advocate-General of the State, the Collector of the District and the Superintendent of Land Records of the District. The affidavit further records that the Deputy Superintendent

of Land Records agreed to provide staff for carrying out demarcation. In paragraphs 9 and 10 of his affidavit, the Superintendent of Police stated thus:

“9. If while constructing the aforesaid wall if appropriate and adequate provision for access is made, enabling those agriculturists who own and possess various parcels of lands that are likely to get land locked because of the erection of the compound wall, to reach their respective agricultural lands owned and possessed by them, one of the important for obstructions to the compound wall, at hand of the tribals, will get resolved.

10. If an assurance is given to the tribals who legally own and possess various parcels of land that are likely to get covered by the proposed erection of the compound wall that they are not going to dispossessed or ousted, much less illegally by the erection of the compound wall itself, in any view, major reason for obstruction to the erection of the compound wall, by the tribals, will disappear.”

(emphasis added)

8. On 14th March 2022, Mr Mahesh Ingale, the District Superintendent of Land Records, who is a survey officer under the Maharashtra Land Revenue Code, 1966 (for

short, 'the MLR Code'), filed an affidavit. In paragraph 9 of his affidavit, he stated thus:

“9. I say that after the measurement, as aforesaid, was carried out and the original records maintained by my office were verified in that context it appears that, there are various lands situate within survey number 173 in respect of which, as a result of proceedings initiated in the Bombay Tenants and Agricultural Lands Act, various persons have become owners of the lands of various pockets that have been marked in red colour, in the map, which has been produced on 14.03.2022 before this Hon’ble Court. There are also certain persons to whom the petitioner and others have sold small portions of the lands and thus these persons have become owners and are in possession thereof. If a compound wall is constructed as desired by the petitioner, the aforesaid pieces of land owned by the third parties and lawfully possessed by them are likely to get land locked. Therefore, in my submission, while constructing the aforesaid compound wall, appropriate arrangements will have to be made to provide due access to these lawful owners and occupiers of various parcels of lands that is likely to be get land-locked on

account of the construction of the proposed wall.”

(emphasis added)

It is pertinent to note that the land bearing survey no. 173 is a part of the property which is the subject matter of Arbitration Petition in which consent terms were filed.

9. The Division Bench did not notice the specific contentions raised by both the Government officers and did not direct the 1st and 2nd respondents to implead the affected tribals as parties. Instead of either directing impleadment of the affected parties or dismissing the Writ Petition for non-joinder of necessary parties, the Division Bench passed an order in terms of the “Minutes of Order” dated 16th March 2022 signed by the advocate for 1st and 2nd respondents and Panel-B counsel representing all Government officers including the Superintendent of Police, the Collector and Superintendent of Land Records. One Sambhaji Kharatmol purported to sign as an advocate for interveners. The relevant part of the “Minutes of Order” makes interesting reading. Paragraph 2 reads thus:

“2. Mr. Kumbhakoni, the Learned Advocate General for the State of Maharashtra, has tendered the plan showing the land of Mrs. Meher Khushru Patel and Others (Parsi Dairy Farm) S No. 173/1,2,3,4,5,6,7,8,10,15,16,18, S. No. 55, 61, 200 and 202 Situated at Village – Varwada, Taluka – Talasari, Dist. –

Palghar. The same is taken on record and marked as 'X' are stated to belong to third parties. However, the survey numbers mentioned against serial no. 1. 5. 8 and 10 to 12 in the legend in the plan marked 'X' are now confirmed by the Petitioners to belong to the Petitioners' firm – Parsi Dairy Farm.”

Paragraph 4 notes both the affidavits dated 14th March 2022, which we have referred to above and records that the statements of the said officers were accepted. The “Minutes of Order” provides for issuing a direction to the survey authorities to carry out the demarcation of the boundary and a direction to the police to provide protection for carrying out the measurement and construction of the compound wall. Clause (iii) of paragraph 6 of the “Minutes of Order” reads thus:

“6.....
(i).....
(ii).....
(iii) The Construction of the boundary wall as per the order dated 12th February 2021 by the Learned Single Judge in the Arbitration Petition no. 451 of 2018, shall be carried out by the Petitioners simultaneously with the aforesaid work of demarcation and marking of points. **The Petitioners shall ensure that sufficient access is provided for the other owners of land**

whose property falls within the confines of the boundary wall in such a manner that the dame do not become land locked by virtue of the construction of the boundary wall.”
(emphasis added)

Thus, the fact that the third parties would be affected by the construction of the compound wall is noted in the “Minutes of Order”. The Writ Petition was disposed of on 16th March 2022 by a cryptic order directing that the Writ Petition stands disposed of in terms of the “Minutes of Order” taken on record and marked “X” for identification. Paragraphs 2 and 3 of the said order read thus:

“2. The Minutes of the Order are signed by the learned Advocate appearing for the Petitioners, the Learned AGP appearing for Respondent Nos. 1 to 6 and 10 to 12 along with the Advocate General as well as the learned Advocate appearing for the Interveners / farmers – Shankar Kharpade, Raghu Kharpade, Ganu Kharpade, Sadu Kharpade, Sonu Paadvi, Pradeep Savji Urade, Ajay Kharpade, Suresh Kharvade and Sarita Kharvade carrying farming activities on land bearing Survey No. 390 (part).

3. The above Writ Petition is disposed of in terms of the Minutes of the Order dated 16th March, 2022.”

Reasons were not recorded for passing an order in terms of the 'Minutes of Order'. A Government counsel signed the "Minutes of Order" notwithstanding a clear stand taken in the affidavits dated 14th March 2022 filed by the senior Government officers who had emphasized that tribals were likely to be affected by the construction of the compound wall. The Government pleader, as an officer of the Court, owed a duty to the Court to point out the requirement of impleading necessary parties who were tribals. Even the bench did not take note of the admitted fact that third parties would have been affected by the construction of the compound wall that was permitted to be constructed under police protection. The Court ignored the fundamental principle that the issue of whether the third parties' properties would be landlocked due to the construction of the wall could be decided only after hearing the concerned parties. The least the Court could have done was to direct that a notice of survey should be issued to the affected tribals. Even that was not done.

10. The present appellants sought a review of this order. The contentions raised by them can be briefly stated as follows:

- a)** Out of 30 review petitioners, review petitioner nos. 7 to 18 were purportedly shown as interveners in the "Minutes of Order", though they had not engaged any advocate;

- b)** The said interveners never met the advocate who is shown to have signed the “Minutes of Order” on their behalf;
- c)** The appellants had rights in respect of the several properties which were likely to be adversely affected by the construction of the compound wall; and
- d)** The elementary principles of natural justice were not followed before permitting the construction of a compound wall under police protection.

A Division Bench dismissed the review petition by the impugned order. The Court held that if, according to the appellants, any illegality has been committed, notwithstanding the observations made in the order dated 16th March 2022, the appellants can raise an appropriate grievance before the appropriate forum.

11. The order dated 9th February 2024 passed by this Court on the present appeal reads thus:

“We direct the State Government to comply with the earlier order of filing the affidavit. The said affidavit to be filed within a period of two weeks from today.

The minutes of the order on page 63 of the Petition record the statement of the owners, which reads thus:

“iii...The Petitioners shall ensure that sufficient access is provided for the other owners of land whose property falls within the confines of the boundary wall in such a manner that the same do not become land locked by virtue of the construction of the boundary wall.”

We direct the petitioners before the High Court who are parties here to file an affidavit stating the names of the owners who are referred to in Clause iii of the minutes of the order. The said affidavit to be filed within a period of two weeks.

The learned counsel appearing for the petitioners will take instructions whether the petitioners want to stand by the allegations made by him against the sitting Judges of the High Court, the members of the Bar and the learned Advocate General.

List on 11th March, 2024.”

A further order dated 11th March 2024 was passed, which reads thus:

“ Notwithstanding the order dated 9th February, 2024, the petitioners before the High Court have chosen not to disclose the names of the parties who are referred in the Minutes of the Order.

The learned senior counsel appearing for the petitioners before the

High Court and the learned counsel appearing for the State assure the Court that within two weeks from today, they will place on record the names and other details of the parties who are referred in clause (3) of the Minutes of the order dated 16th March, 2022. The learned senior counsel appearing for the petitioners before the High Court seeks time to file a proper affidavit in terms of the order dated 9th February, 2024.

List on 5th April, 2024.”

An affidavit dated 24th March 2024 was filed by the 1st and 2nd respondents in compliance with the orders dated 9th February 2024 and 11th March 2024. They stated that a boundary wall was constructed between March 2022 and June 2022 after the survey was carried out. They stated that the compound wall had been built in such a manner that no person was landlocked or in any manner inconvenienced. In the affidavit, they have given details of the land owned by the Parsi Dairy Farm (the land subject matter of Arbitration Petitions) and the names of several persons who are owners of the lands adjacent to the land of the Parsi Dairy Farm. It is claimed in the affidavit that notwithstanding the construction of the compound wall, the owners of the adjacent lands continue to enjoy unhindered and unfettered access to their respective land.

SUBMISSIONS IN BRIEF

12. The learned counsel for the appellant submitted that the impugned order passed based on the “Minutes of Order” is completely illegal and vitiated by the non-joinder of necessary parties. The learned senior counsel for the 1st and 2nd respondents and the learned counsel for the State defended the impugned order by submitting that no one has been prejudiced due to the construction of the compound wall.

13. During the earlier hearings, we had repeatedly suggested to the learned senior counsel appearing for the 1st and 2nd respondents that the only proper course would be to remand the Writ Petition with a direction to implead persons claiming to be affected by the construction of the compound wall, as it seems to be an admitted position that several persons are likely to be affected by the construction of the compound wall in terms of the orders passed in the Writ Petition. However, the 1st and 2nd respondents did not accept the suggestion. Hence, we are called upon to decide this appeal on merits.

CONSIDERATION OF SUBMISSIONS

14. We have already quoted what the Deputy Superintendent of Police and the Superintendent of Land Records stated in their respective affidavits filed on 14th March 2022. In so many words, both of them stated on oath that the tribals who own and possess various parcels

of adjacent lands were likely to be affected by the construction of the compound wall. In fact, in paragraph 9 of his affidavit, the District Superintendent of Land Records, who is the survey officer of the district under the MLR Code in categorical terms stated that if the compound wall is constructed as desired by the petitioners in the Writ Petition (1st and 2nd respondents herein), pieces of lands owned and lawfully possessed by third parties are likely to get landlocked.

15. Now, we come to the “Minutes of the Order”. According to the latest affidavit of the 1st and 2nd respondents, several tribals claim to be owners of the lands adjacent to those claimed by the 1st and 2nd respondents. The “Minutes of the Order” refers to the officers' affidavits. Sub-clause (iii) of clause 6, which we have quoted above, records that the writ petitioners shall ensure that sufficient access is provided for the other owners of the land whose property falls within the confines of the boundary wall in such a manner that their lands do not become landlocked. Even assuming that advocate Sambhaji Kharatmol was authorized by nine interveners to sign, the fact remains that several other owners or occupants of the lands likely to be affected by the compound wall were not impleaded as parties to the petition. Without even adverting to the factual aspects brought on record by two responsible Government officers

in their affidavit dated 14th March 2022, the Division Bench mechanically passed an order in terms of the “Minutes of the Order” and disposed of the Writ Petition. Now we have a scenario where, under police protection, survey work and construction of the compound wall have been carried out by 1st and 2nd respondents. An illegality has been allowed to be perpetrated under the protection of the police. As noted earlier, even the Government counsel did not perform his duty by submitting before the Court as an officer of the Court about the failure to implead the necessary parties.

PRACTICE OF PASSING ORDERS IN TERMS OF “MINUTES OF ORDER” FILED BY THE ADVOCATES

16. Now, we deal with the concept of “Minutes of Order”, which is peculiar only to the Bombay High Court. This Court, in the case of ***Speed Ways Picture Pvt. Ltd. and Anr. v. Union of India and Anr.***¹ had an occasion to consider the practice of passing orders in terms of “Minutes of Order”. Paragraphs 5 and 6 of the said decision reads thus:

“5. The basis upon which the review petition was decided is, in our view, not correct. Counsel for the appellants and the respondents put it in writing that a judgment of this Court and a Full Bench judgment of the High Court covered the

1 (1996) 6 SCC 705

matter. The writ petition in that High Court could, therefore, not succeed. This could have been orally stated and recorded by the Court. **As a courtesy to the Court, the practice of long standing is to put statements such as these in writing in the form of “minutes of order” which are tendered and on the basis of which the Court passes the order: “Order in terms of minutes”. The signatures of counsel upon “minutes of order” are intended for identification so as to make the order binding upon the parties' counsel represented. An order in terms of minutes is an order in invitum, not a consent order. It is appealable and may be reviewed.**

6. It would be a different matter if the order of the court was passed on “Consent Terms”, i.e., on a statement above the signatures of counsel which expressly stated it was “by consent”. The order of the court in such event would read: “Order in terms of consent terms.”

(emphasis added)

17. As the order passed in terms of the “Minutes of Order” is an order in invitum, when a document styled as “Minutes of Order” signed by the advocates for the parties is tendered on record, the Court must first examine whether it will be lawful to pass an order in terms of the “Minutes of Order”. The Court must consider whether all

necessary parties have been impleaded to the proceedings in which the “Minutes of Order” have been filed. The Court must consider whether third parties will be affected by the order sought in terms of the “Minutes of Order”. If the Court is of the view that necessary parties were not impleaded, the Court ought to allow the petitioner to implead them. On the failure of the petitioner to implead them, the Court must decline to pass an order of disposing of the petition in terms of the “Minutes of Order”. The reason is that an order of the Court passed without hearing the necessary parties would be illegal. The Court must remember that though the parties may say that they have agreed to what is recorded in the “Minutes of Order”, the order passed by the Court based on the “Minutes of Order” is not a consent order. It is an order in invitum. Only if the Court is satisfied that an order in terms of the “Minutes of the Order” would be legal, the Court can pass an order in terms of the “Minutes of Order”. While passing an order in terms of the “Minutes of Order”, the Court must record brief reasons indicating the application of mind.

18. For the convenience of the Court and as a matter of courtesy, the advocates draft “Minutes of Order” containing what could be incorporated by the Court in its order. Perhaps this practice was evolved to save the time of the Court. The advocates who sign and tender the “Minutes of Order” have greater responsibility. Before they

sign the “Minutes of the order”, the advocates have an important duty to perform as officers of the Court to consider whether the order they were proposing will be lawful. They cannot mechanically sign the same. After all, they are the officers of the Court first and the mouthpieces of their respective clients after that.

19. Even if parties file consent terms, while accepting the consent terms in terms of Rule 3 of Order XXIII of the Code of Civil Procedure Code, 1908, the Court is duty-bound to look into the legality of the compromise. The Court has the jurisdiction to decline to pass a consent order if the same is tainted with illegality. However, an order passed by the Court in terms of compromise recorded in the consent terms is a consent order which will not bind the persons who were not parties to the consent terms unless they were claiming through any of the parties to the consent terms.

20. We summarise our conclusions regarding the concept of the “Minutes of Order” as follows:

- a)** The practice of filing “Minutes of Order” prevails in the Bombay High Court. As a courtesy to the Court, the advocates appearing for the parties to the proceedings tender “Minutes of Order” containing what could be recorded by the Court in its order. The object is to assist the Court;
- b)** An order passed in terms of the “Minutes of Order” tendered on record by the advocates representing the

parties to the proceedings is not a consent order. It is an order in invitum for all purposes;

- c) Before tendering the “Minutes of Order” to the Court, the advocates must consider whether an order, if passed by the Court in terms of the “Minutes of Order,” would be lawful. After “Minutes of Order” is tendered before the Court, it is the duty of the Court to decide whether an order passed in terms of the “Minutes of Order” would be lawful. The Court must apply its mind whether the parties who are likely to be affected by an order in terms of the “Minutes of Order” have been impleaded to the proceedings;
- d) If the Court is of the view that an order made in terms of the “Minutes of Order” tendered by the advocates will not be lawful, the Court should decline to pass an order in terms of the “Minutes of Order”; and
- e) If the Court finds that all the parties likely to be affected by an order in terms of the “Minutes of Order” are not parties to the proceedings, the Court will be well advised to defer passing of the order till all the necessary parties are impleaded to the proceedings.

FINDINGS ON FACTS OF THE CASE

21. In the facts of the case, the senior district-level officials of the State had stated on oath that the

construction of the compound wall, in respect of which relief was sought in the Writ Petition, would affect the rights of several third parties. However, the Court completely ignored the same. Even in clause 6 (iii) of the “Minutes of Order”, there was enough indication that the compound wall, if not appropriately constructed, would affect the rights of owners of the other lands. Therefore, it was the duty of the Court to have called upon the 1st and 2nd respondents to implead the persons who were likely to be affected. The 1st and 2nd respondents could not have pleaded ignorance about the names of the concerned parties as they have referred to the owners of the other lands in the “Minutes of Order”. However, the Division Bench of the High Court has failed to make even an elementary enquiry whether third parties will be affected by the construction of the compound wall under police protection. Hence, the order dated 16th March 2022 passed in the Writ Petition in terms of the “Minutes of Order” is entirely illegal and must be set aside. The Writ Petition will have to be remanded to the High Court to decide the same in accordance with the law.

22. The construction of the compound wall is complete; therefore, while remanding the Writ Petition to the High Court, we must clarify that the construction will be subject to the final decision in the Writ Petition. After remand, the High Court will have to call upon the 1st and 2nd

respondents to implead necessary parties to the petition. If required, the Court must decide who the necessary parties to the petition are. It will always be open for the appellants to apply for impleadment. While determining who the necessary and proper parties are, the appellants' application will have to be considered by the High Court. It follows that on the failure of the 1st and 2nd respondents herein to implead the necessary parties, the High Court will be well within its power to dismiss the Writ Petition and pass an order of restoration of *status quo ante* by directing demolition of the compound wall.

23. Hence, we pass the following order:

- a)** We set aside the order dated 16th March 2022 in Writ Petition No. 2584 of 2022 and the order dated 20th July 2023 in the Review Petition and restore Writ Petition No. 2584 of 2022 to the file of the High Court;
- b)** We direct the Registrar (Judicial) of the Bombay High Court to list the restored Writ Petition before the roster Bench on the first day of re-opening of the Court after the ensuing summer vacation. The parties to the appeal shall appear before the Court on that day as they will not be entitled to any further notice of the Writ Petition;

- c)** It will be open for the appellants to apply for impleadment in the Writ Petition on all available grounds;
- d)** After the remand, the High Court will decide whether all the necessary parties likely to be affected by the construction of the compound wall in terms of the “Minutes of Order” were impleaded as party respondents. While doing so, the case of the petitioners shall also be considered;
- e)** If the Court concludes that the 1st and 2nd respondents had not impleaded necessary parties to the Writ Petition and within a reasonable time if the 1st and 2nd respondents fail to implead the necessary parties, the High Court will be free to follow the logical course of dismissing the Writ Petition. While doing so, the High Court will have to order the restoration of the *status quo ante* by directing the demolition of the compound wall; and
- f)** After the 1st and 2nd respondents implead all the necessary parties to the Writ Petition, the same shall be decided finally in accordance with law. We clarify that construction of the compound wall made by the 1st and 2nd respondents shall be subject to the final outcome of the restored petition. Therefore, if the construction is found to be illegal or if it is found that it adversely affects

the rights of the third parties, the High Court may pass an order of demolition of the compound wall or a part thereof.

24. The appeal is partly allowed on the above terms.

25. A copy of this judgment will be immediately forwarded to the Registrar (Judicial) of the Bombay High Court.

26. We record the assurance of the learned counsel appearing for the appellants that they will not press complaints filed by them against the sitting or former Judges of the Bombay High Court, members of the Bar and the learned Advocate-General. We clarify that if the appellants have commenced any proceedings based on the complaints, the same shall stand disposed of.

.....J.
(Abhay S. Oka)

.....J.
(Ujjal Bhuyan)

**New Delhi;
April 30, 2024.**