

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.1575 OF 2015

Shri. Ramchandra Dadu Tippe

.. Petitioner

Versus

Chief Executive officer,

Zilla Parishad Kolhapur and others

.. Respondents

Shri. Manoj A. Patil, for the Petitioner.

CORAM : R.M. SAVANT, J.

DATE : 27th FEBRUARY, 2015

PC.

1. The Writ Jurisdiction of this Court is invoked against the order dated 20.12.2014 passed by the Learned Adhoc District Judge-4, Kolhapur, by which order the Appeal came to be allowed and resultantly the order dated 06.12.2008 passed by the Learned Civil Judge, Junior Division, Kagal, District-Kolhapur, allowing application Exh.5 came to be set aside and the application Exh.5 in turn came to be dismissed.

2. The bone of contention in the present proceedings is the District Road No.61 which is passing through the property of the Plaintiff. It is the case of the Plaintiff that Defendant No.1 by encroaching upon his property to the extent of 17.73 Ares land for the road that has been

proposed and is at the stage where it is likely to be Tar road constructed by the Respondent No.1/Zilla Parishad. The road is passing through block No.213. It seems that in the Consolidation Scheme, the Plaintiff was given more area by removing the share from Defendant No.2. It is the case of the Plaintiff that initially the road was passing through the Survey No.216 to the extent of 4 Ares, but after the measurement, it is passing through block No.213 to the extent of 17.73 Ares portion. Significantly the Plaintiff has not stated as to when the alleged encroachment has been carried out by the Defendant No.1. It seems that there is a dispute between the Plaintiff and the Defendant No.2 about the extent of their respective possession and title over the land which is part and parcel of Survey No.238. The Plaintiff had filed the suit bearing No.108 of 1993 for removal of encroachment against the Defendant No.2 and the instant suit was founded on the measurement carried out by the Plaintiff through TILR of land bearing block No.213 on 15.01.1993. The said suit came to be dismissed by the Trial Court by recording a finding that when the Consolidation Scheme was implemented in the Village Tamanakwada, Taluka-Kagal, the Plaintiff was given more area than he was entitled by removing the same from the Defendant No.2's property. The Plaintiff had challenged the said decree in the Lower Appellate Court by filing Regular Civil Appeal No.305 of 2005. But, thereafter in the year 2007 he again

carried out measurement of his property block No.213 and withdrew the said Appeal. In view thereof the decree passed in Regular Civil Suit No.108 of 1993 of dismissal of the suit attained finality. In the instant suit, it is required to be noted that the Trial Court vide its order dated 06.12.2008 allowed the application Exh.5. The Trial Court on the basis of the material on record came to a conclusion that the Plaintiff is having valid title to the disputed portion and if injunction is not granted, then the Defendant would construct a Tar road which would naturally cause prejudice to the Plaintiff. The Trial Court also observed that at present the entire road is passing through the property of the Plaintiff. The aggrieved Defendant No.1 i.e. Zilla Parishad, Kolhapur filed Misc. Civil Appeal No.22 of 2009. The Lower Appellate Court as indicated above by the impugned order dated 20th December, 2014 has allowed the Appeal. The Lower Appellate as can be seen from the impugned order has adverted to the fact that in the Consolidation Scheme, the Plaintiff was given more area by removing the share from Defendant No.2 and therefore came to a conclusion at the prima-facie stage, it cannot be held that the Plaintiff has made out a case for the grant of temporary injunction. The Lower appellate Court also observed that the disputed road passing through block No.213 which is owned by the Defendant No.2 is in existence since the year 1974 and it is the main district road bearing No.61. The Lower

Appellate Court observed that at the said stage it was not concern with whether the disputed road has been prepared without acquisition of the property, as it is not the Plaintiff's case that it has been so done. The Lower Appellate Court therefore observed that if the suit way is not converted into a Tar road public at large would be affected. The Lower Appellate Court lastly observed that the instant suit has been filed only as a counter to the decree passed in Regular Civil Suit No.108 of 1993. In my view, the Lower Appellate Court for cogent reasons has set aside the order passed by the Trial Court granting temporary injunction. The consideration which has weighed with the Lower Appellate Court is that if the road is not tarred then the public at large would be affected, whereas no prejudice would be caused to the Plaintiff, in view of the fact that the Plaintiff has been allegedly handed over an excess area in the Consolidation Scheme. In that view of the matter, no case for interference in the Writ Jurisdiction of this Court is made out. The Writ Petition is accordingly, dismissed.

[R.M. SAVANT, J]