

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5040 OF 2015

1]	Smt. Mainabai Rajaram Dagade	]
		]
2]	Smt. Nanda Malhari Dagade	]
		]
3]	Shri Prabhakar Bhagwan Dagade	]
		]
4]	Shri Macchindra Bhagwan Dagade	]
		]
5]	Shri Bapurao Krushnaji Dagade	]
		]
6]	Shri Nanaso Krushnaji Dagade	]
		]
7]	Shri Vinod Macchindra Dagade	]
		]
8]	Shri Sopan Krushna Dagade	]
		]
9]	Shri Shankar Krushna Dagade	]
		]
	All Age : Adult, Occ : Agriculturist,	]
	R/at : Varkute Khurd, Tal : Indapur	]
	Dist. Pune	]..... Petitioners

versus

1]	The Sub-Divisional Officer,	]
	Baramati, Sub-Division, Baramati	]
		]
2]	The Tehsildar Baramati	]
		]
		]
3]	Sou. Soudamini Navanath Dagade	]
	Age : Adult, occ : Agriculture,	]
	R/at : Varkute Khurd, Tal : Indapur	]
	Dist. Pune	]..... Respondents.

Mr. R S Kadam for the Petitioners
Ms. Manjiri S Parasnis for the Respondent No.1.
Mr. S D Rayrikar, AGP for the Respondent Nos.2

CORAM : R. M. SAVANT, J.
DATE : 2nd July 2015

ORAL JUDGMENT

1 Rule with the consent of the learned counsel for the parties made returnable forthwith and heard.

2] The writ jurisdiction of this Court is invoked against the order dated 8/1/2015 passed by the Sub-Divisional Officer, Baramati by which order the Revision Application filed by the Respondent No.3 herein came to be allowed and resultantly the order dated 10/2/2012 passed by the Tahsildar, Indapur in Rasta Case No.57/2011 came to be set aside.

3] The dispute is in respect of the alleged obstruction on the boundary of Gat No.244 and Gat No.245 on the south of the Varkute to Vadapuri Road made by the Respondent No.3 herein.

4 The Petitioner Nos. 3 to 9 herein are the Applicants who had made the said Application invoking Section 5 of the Mamlatdar's Court Act in view of the fact that the same was causing obstruction to them while approaching their land in Gat No.244. It seems that to ascertain the position on site, the Tahsildar had carried out the site inspection and prepared a report. The Tahsildar had

thereafter allowed the Application by his order dated 10/2/2012. It seems that whilst the proceedings before the Tahsildar were at the fag end, that the Respondent No.3 herein filed Regular Civil Suit No.7 of 2012 and the principal relief sought was an injunction restraining the Defendant Nos.1 to 7 i.e. the Petitioner Nos.3 to 9 herein from carving out the new road on the basis of the order to be passed in the pending proceedings before the Tahsildar. In the said suit an Application for temporary injunction came to be filed by the Plaintiff i.e. the Respondent No.3 herein. The said Application was allowed by the Trial Court and the Petitioners herein were enjoined from carving out a new road. The said order of injunction was challenged by the Petitioners by filing Misc. Civil Appeal. The said Misc. Civil Appeal came to be dismissed on 30/10/2012 and resultantly the injunction granted by the Trial Court was confirmed. It seems that after the suit was filed and the application for injunction was pending, that the Tahsildar passed the order dated 10/2/2012, against which order dated 10/2/2012 the Respondent No.3 herein filed a Revision Application before the Sub-Divisional Officer. The Sub-Divisional Officer having regard to the injunction granted by the Trial Court and confirmed by the Appellate Court allowed the Revision Application and set aside the order dated 10/2/2012 passed by the Tahsildar. It is the said order dated 8/1/2015 passed by the Sub Divisional Officer which is taken exception to by way of the above Petition.

5 One of the contentions urged on behalf of the Petitioner contentions urged on behalf of the Petitioners is that the Respondent No.3 could not prosecute two parallel proceedings i.e. adopt the remedy provided under the Mamlatdar's Court Act and also prosecute the suit in the Civil Court in respect of the same subject matter.

6 The learned counsel appearing on behalf of the Respondent No.3 initially sought to justify the filing of the suit however during the course of hearing of the above Petition on instructions of the Respondent No.3 made a statement that the Respondent No.3 would withdraw the Revision Application filed before the Sub-Divisional Officer being No.16 of 2012. Statement accepted In view of the said statement made by the learned counsel for the Respondent No.3, it is not necessary to consider the impugned order passed by the Sub-Divisional Officer on merits. The said order dated 8/1/2015 to accordingly stand set aside. Since the Respondent No.3 has already adopted civil proceedings i.e.; the Regular Civil Suit No.7 fo 2012, the order passed by the Tahsildar dated 10/2/2012 would be subject to the result of the said suit. In the event the suit is dismissed or injunction vacated the Petitioners can apply for execution/implementation of the said order, subject to the order that may be passed by the higher courts. In view thereof the order passed by the Tahsildar dated 10/2/2012 stands revived and would operate if there is no impediment for the same. The above Petition is accordingly allowed to the

aforesaid extent. Rule is accordingly made absolute with parties to bear their respective costs.

[R.M.SAVANT, J]