

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.5021 OF 2015

Bhagwantrao Sawaliram Pagar and Anr. ... Petitioners
Vs.
Rajubai Sampat Shelke and Ors. ... Respondents

Mr. Sachin D. Kadam for Petitioners.
Mr. Suresh M. Sabrad for Respondents.

CORAM : R. G. KETKAR, J.
DATE : 9TH JUNE, 2015

P.C. :

Not on Board. At the request of Mr. Kadam, taken up in the production Board.

2. Heard Mr. Kadam, learned Counsel for petitioners and Mr. Sabrad, learned Counsel for respondents at length.

3. By this Petition under Article 227 of the Constitution of India, petitioners have challenged the judgment and order dated 14.08.2012 passed by the Civil Judge Senior Division, Niphad below exhibit-5 in Regular Civil Suit No.120 of 2012 as also the judgment and order dated 07.03.2015 passed by the learned District Judge-1, Niphad below exhibit-1 in Miscellaneous Civil Appeal No.41 of 2012. By these orders, the Courts below dismissed the applications made by the petitioners for injunction restraining the defendants No.1 to 6 from creating new road as per the order dated 03.01.2012 passed by the Tahsildar.

4. Petitioners instituted Suit for declaration that no way was / is in existence through the western boundary of Gat No.108, 109, 110 and

111 so as to approach Gat No.112 and 115 as more particularly described in paragraphs 1-B and 1-C of the plaint. By the impugned orders, the Courts below rejected the application for injunction.

5. In support of this Petition, Mr. Kadam submitted that respondents-original defendants instituted proceedings under Section 5 of the Mamlatdar's Courts Act, 1906 (for short 'Act'). By order dated 03.01.2012, Tahsildar allowed the application and restrained the petitioners from causing obstruction to the user of the respondents of approaching Gat No.112 and 115 from Gat No. 108, 109, 110 and 111. He submitted that by the present Suit, the petitioners have sought declaration that the order passed by the Tahsildar is illegal, null and void. If the injunction as prayed for is not granted, the Suit will be rendered infructuous. He also reiterated the submissions that were advanced before the Courts below.

6. On the other hand, Mr. Sabrad submitted that the order of the Tahsildar dated 03.01.2012 was confirmed in revision preferred by the petitioners on 31.01.2014. These orders were challenged by the petitioners by instituting Petition in this Court. That Petition was dismissed on 04.09.2014. He submitted that during the pendency of the Suit, petitioners cannot pray for any interim order, which will have effect of nullifying the orders passed in favour of the respondents.

7. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. It is not in dispute and is rather matter of record that the application made by the respondents under Section 5 of the Act was allowed by the Tahsildar on 03.01.2012. Aggrieved by that decision, petitioner preferred revision before the Sub-Divisional Officer, which

was dismissed on 31.01.2014. Petition instituted by the petitioners was dismissed by this Court on 04.09.2014. In view thereof, unless and until petitioners succeed in obtaining relief in terms of prayer clause (b) namely, declaration that the order passed by the Tahsildar in Vahivat Case No.34 of 2009 on 03.01.2012 conferred no right of way upon defendants No.1 to 6, petitioners cannot get any interim relief, which has the effect of nullifying the orders passed in favour of the respondents.

8. In view thereof, no case is made out for invocation of powers under Article 227 of the Constitution of India. Hence, the Petition fails and the same is dismissed.

(R. G. KETKAR, J.)

Minal Parab