

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

WRIT PETITION NO.9017 OF 2015

Bhiva Gangaram Dhavale & Anr. : Petitioners.
Versus
Sopan Ganpat Mane & Anr. : Respondents.

Mr. Nitin P Dalvi for the Petitioners.

CORAM : R. M. SAVANT, J.
DATE : 15th March 2016

P.C.

1 The writ jurisdiction of this Court is invoked against the order dated 15/07/2015 passed by the Sub Divisional Officer, Madha Division, Kurduwadi, Dist. Solapur by which order the Appeal filed by the Petitioners came to be dismissed and the order dated 16/12/2014 passed by the Tahsildar, Madha came to be confirmed.

2 The Petitioners herein are the original Respondents to the Application under Section 5 of the Mamlatdars' Courts Act filed by the Respondent Nos.1 and 2 herein. The said Application was filed inter alia for restraining the Petitioners from obstructing and preventing the Respondent Nos.1 and 2 i.e. the Applicants in the said Application from going through and on the road which is on the bund of lands bearing Gat Nos.62 and 63. It was the case of the Respondent Nos.1 and 2 i.e. the Applicants that on 19/04/2012 when the Respondents were trying to take their vehicles of sugarcane through

the said road an obstruction was created by the Petitioners. In terms of the procedure which is adopted in so far as the proceedings under Section 5 of the said Act are concerned the Tahsildar appointed a Commissioner to visit the site in question and submit a report. The said report was accordingly submitted by the Commissioner which is in the form of panchanama annexed to the above Petition as Exhibit D. It has been recorded in the said panchanama that in the lands bearing Gat Nos. 62, 63, 67 and 68 there is standing crop of sugarcane and that in so far as Gat Nos.62, 67 and 63, 68 are concerned, there is obstruction on the bund which is on the south-north direction of the said lands. The Tahsildar considered the said Application and by his order dated 16/12/2014 allowed the same. The contention urged on behalf of the Petitioners that the Applicants i.e. the Respondent Nos.1 and 2 herein have an alternate road to access their lands in question was not accepted by the Tahsildar. The Tahsildar recorded a finding that the Petitioners herein i.e. the Opponents in the said Application had created obstruction on the road on the bund going through the lands bearing Gat Nos.62 and 63.

3 It seems that after the order dated 16/12/2014 was passed by the Tahsildar, Madha, the Petitioner No.1 has filed Regular Civil Suit No.60 of 2015 in the Court of the Civil Judge Junior Division, Madha. In the said suit, the Petitioner No.1 had filed an Application for temporary injunction to restrain the Respondent Nos.1 and 2 herein from interfering with the possession of the

Petitioner No.1 and to destroy the bund. The said Application for temporary injunction came to be rejected by the Trial Court by the order dated 12/03/2015. The contentions urged on behalf of the Petitioner No.1 in the said suit have been referred to by the Trial Court in paragraph 9 of its order. The Trial Court has rejected the said contentions viz. that the Respondent Nos.1 and 2 have an alternate road and that though the dispute was in respect of bund on the lands bearing Gat Nos. 62 and 63, the Plaintiff has not produced any material on record to indicate the objection of the owner of Gat No.62 to the said bund being used as an access by the owners of Gat Nos. 67 and 68. The Trial Court also adverted to the fact that the Tahsildar in the proceedings under Section 5 of the Act had allowed the Application filed by the Respondent Nos.1 and 2 herein.

4 After the order was passed by the Trial Court rejecting the Application for temporary injunction by the order dated 12/03/2015, an Appeal filed by the Petitioner against the order passed by the Tahsildar had came up for hearing before the Sub Divisional, Madha Division, Kurduwadi. The said Appeal came to be dismissed by the Appellate Authority i.e. the Sub Divisional Officer by the impugned order dated 15/07/2015. The Appellate Authority has referred to the failure of the Petitioners to obtain any injunction in the suit filed by the Petitioner No.1 in the Court of the learned Civil Judge Junior Division, Madha. The Appellate Authority has also adverted to the fact

that by rejecting the Application the Trial Court has in a way confirmed the order passed by the Tahsildar dated 12/03/2015. As indicated above it is the order dated 15/07/2015 passed by the Appellate Authority i.e. the Sub Divisional Officer, Madha Division, Kurduwadi which is taken exception to by way of the above Petition.

5 The learned counsel appearing on behalf of the Petitioners Shri N P Dalvi would seek to re-urge the case of the Petitioners which was urged before the Tahsildar and the Appellate Authority. It was the submission of the learned counsel for the Petitioners that the Authorities below have erred in granting the reliefs which have been granted by the Tahsildar by the order dated 12/03/2015 and confirmed by the Appellate Authority by the order dated 15/07/2015.

6 In my view, it is not possible to accept the contentions of the learned counsel for the Petitioner Shri Dalvi. As indicated above, in terms of the procedure which is usually applicable in the proceedings under Section 5 of the said Act, the Tahsildar has obtained a site report in which it has come on record that the road on bund of Gat Nos.62 and 63 was obstructed. It is required to be noted that the Petitioners herein have failed to demonstrate that there is any alternate road to the Respondent Nos.1 and 2 herein. This fortifies the case of the Respondent Nos.1 and 2 herein that they have been using the

bullock-cart road on the bund of Gat Nos.62 and 63 for ingress and egress. It would have to be borne in mind that the Petitioner No.1 has filed civil proceedings wherein he has sought a declaration in respect of the right of way which the Respondent Nos.1 and 2 are claiming through bund of Gat Nos.62 and 63. The Authorities below have therefore rightly held that it would be in the civil proceedings that the rights of the parties would be decided.

7 In my view, no case for interference in the writ jurisdiction of this Court is made out. The above Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]