

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

WRIT PETITION NO.3922 OF 2015

Bhimaji Nivrutti Jamdar and anr. : Petitioners.
Versus
State of Maharashtra and ors. : Respondents.

Mr. R A Zade for the Petitioners.
Ms. Aparna Vhatkar AGP for the Respondent Nos.1 to 3.
Mr. R S Kate for the Respondent No.4.

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

P.C.

1 The writ jurisdiction of this Court is invoked against the order dated 07/01/2015 passed by the Sub Divisional Officer, Baramati Division, Baramati by which the Revision Application filed by the Respondent No.4 herein came to be allowed and resultantly the order dated 19/09/2013 passed by the Tahsildar, Indapur came to be set aside.

2 The proceedings in question are under Section 5 of the Mamlatdars Courts Act. The Petitioners herein are claiming a right of way through Gat No.326 to approach Gat Nos. 323 and 324/2 from the old Indapur Pune road. In so far as the said application is concerned, the Tahsildar Indapur has, as the order discloses, proceeded on the basis as if it is an application for road under Section 143 of the Maharashtra Land Revenue Code and on the ground that the Applicants i.e. the Petitioners herein are claiming a new road,

has allowed the said application by holding that the said Applicants did not have road to approach to their lands Gat Nos. 323 and 324/2. The Tahsildar accordingly by his order dated 19/09/2013 allowed the said application and directed that the Opponent i.e. the Respondent No.4 herein should not obstruct the Applicants from using the said road passing by the side of the bund adjacent to land Gat No.326.

3 The Respondent No.4 aggrieved by the said order filed the Revision Application before the Sub Divisional Officer, Baramati Division, Baramati. The Sub Divisional Officer has, as indicated above, allowed the said Revision Application by the impugned order dated 07/01/2015. The Sub Divisional officer has adverted to the fact that the Applicants have also filed application under Section 143 of the Maharashtra Land Revenue Code and also have filed Civil Suit in which an application filed by them for appointment of Court Commissioner (Exhibit 16) was rejected by the Trial Court. The Sub Divisional Officer held that consideration by the Tahsildar was improper as the Tahsildar has proceeded on the basis that a road has to be carved out in favour of the Applicants. The Sub Divisional Officer has accordingly by the impugned order dated 07/01/2015 allowed the Revision Application and set aside the order dated 19/09/2013 passed by the Tahsildar Indapur.

4 It is required to be noted that the Applicants have already filed a

Civil Suit and the substantive relief sought therein is of injunction restraining the Respondent No.4 herein from obstructing their right of way through the said land Gat No.326. In my view, having regard to the fact that a Civil Suit has already been filed, it would be in the Civil Suit that the rights of the parties would be decided. In that view of the matter, no case for interference with the order passed by the Sub Divisional Officer, Baramati Division, Baramati, in the writ jurisdiction of this Court is made out. The above Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]