

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

WRIT PETITION NO. 10915 OF 2015

Seco Tools India Private Limited

..Petitioner.

Vs

1. State of Maharashtra and Ors.

.. Respondents

Mr. Drupad Patil i/b Clove Legal, Advocates for Petitioner.

Mr. A.R. Metkari, Advocate for Respondents.

CORAM : R.G.KETKAR,J.

DATE : 13/12/2016

PC:

1. Heard Mr. Drupad Patil, learned counsel for the petitioner and Mr. A.R. Metkari, learned A.G.P for respondents no.1 and 2 at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner, herein after referred to as 'plaintiff', has challenged the Judgment and order dated 23.9.2013 passed by the learned 7th Jt. Civil Judge, Senior Division, Pune below Exhibits 5 and 28 in R.C.S. No.896 of 2013 as also the Judgment and order dated 29.4.2015 passed by the learned Ad-hoc District Judge-5, Pune in Misc. Civil Appeal No.15 of 2014. By these orders, the Courts below rejected the Applications Exhibits 5 and 28 filed by the plaintiff.

3. It is the case of the plaintiff that he is owner of Gat No.598 to 605. The plaintiff had purchased Gat no. 616 which is abutting

Pune-Ahamadnagar road. The said land was purchased by the plaintiff only for access to its factory, situate in Gat no.603 to 605 which is adjacent to Gat no.616. The plaintiff had reserved the right of way to cross Gat no.616 only through its vendor for access to their agricultural lands situate adjacent to Gat no.616. Defendants no. 3 to 10 initiated proceedings under section 143 of the Maharashtra Land Revenue Code, 1966 (for short,'Code') before Tahasildar for grant of way to the suit land. The plaintiff instituted suit, inter alia, for setting aside order dated 28.2.2013 passed by Tahasildar in proceedings under section 143 of the Code. During the pendency of the suit, the plaintiff took out Applications Exhibits 5 and 28 for injunction restraining defendants no.3 to 10 from breaking the wall of the suit premises or entering into the suit premises and also for stay of the order dated 28.2.2013 passed by Tahasildar. By the impugned order, the Courts below have rejected the applications. It is against this order, the plaintiff has instituted the present petition.

4. In support of this petition, Mr Patil strenuously contended that the courts below failed to consider the recitals in the sale deed which permitted access only to vendors of the plaintiff for approaching their respective lands. The courts below however proceeded on the premises that the said access is a public road available to defendants no.3 to 10. He further submitted that under section 143 of the Code, Tahasildar has no power to order

removal of impediment and the said power is available only to Mamlatdar exercising powers under section 5 of the Mamlatdars Courts Act, 1906. In support of this proposition he relied upon the decision of this Court in Krushna Damaji Choudhari Vs Vs. Addl. Collector, Nagpur Division, 2011(5) Mh. L.J. 755.

5. I have considered the submissions advanced by Mr. Patil. I have also perused the material on record. Perusal of the impugned orders and in particular the order of the learned District Judge shows that the learned District Judge has considered the recitals in the sale deed. In paragraph 6, the learned District Judge has noted that perusal of the map produced on record by the plaintiff clearly shows that the said way is an old way which is used by people/farmers. The sale deed also referred to the rights of the vendors of the plaintiff. The plaintiff had tried to block the said way by making construction of compound wall which gave rise to the dispute between the plaintiff on one hand and defendants no.3 to 10 whose lands are situate near the suit land. The learned District Judge noted that the sale deed also recognised the rights of defendants no.3 to 10 to use the said way and, therefore, it is a public way which is used by public at large. The learned District Judge, therefore held that the plaintiff failed to establish prima facie case, balance of convenience as also did not establish that irreparable loss and

hardship will be caused to the plaintiff in case injunction is refused. In paragraph 9, the learned District Judge observed that irreparable loss will be caused to defendants no. 3 to 10 which cannot be compensated in terms of money to these defendants. The courts below after appreciating the material on record have concurrently rejected the applications. Mr Patil relied upon the decision of this Court in *Krushna Damaji Choudhari (supra)*. This Court has held that under Section 143 of the Code, the Tahasildar has no power to order removal of impediment and that power can be exercised only under section 5 of the Mamlatdars Courts Act. Even if it is accepted that only Mamaltdar has power under section 5 to remove impediment, the Courts below, after considering the material on record, have rejected the applications. The plaintiff was not in a position to demonstrate that the findings recorded by the Courts below are perverse being based on no material on record or that they are contrary to material on record. Hence, no case is made out for invocation of powers under Article 227 of the Constitution of India. Petition fails and the same is dismissed. Mr. Patil states that plaintiff will file proposal before the trial Court for providing access to defendants no.3 to 10 by putting a gate and issuing passes to them. Statement made by Mr Patil is recorded.

(R.G.KETKAR, J.)