

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION St. NO. 32912 OF 2016**

Shri Dilip Maruti Kadam & Anr.

..Petitioners

Vs.

Shri Sagar Arun Kadam & Ors

..Respondents

Mr. Rushikesh Barge for the Petitioners

Mr. K. U. Patil for the Respondent No.1

Mr. S. Kalel AGP for the Respondent Nos.2 to 4

CORAM : R. M. SAVANT, J.

DATE : 7th DECEMBER, 2016

P.C.

1 The Writ Jurisdiction of this Court is invoked against the order dated 18-11-2016 passed by the State Government, i.e. the Hon'ble Minister for Revenue, Government of Maharashtra, by which order, the Revision Application filed by the Petitioners came to be dismissed and resultantly the order dated 1-7-2016 passed by the Additional Commissioner, Pune Division, Pune, came to be confirmed.

2 The proceedings in question have arisen on account of the application made by the Respondent No.1 herein before the Tahsildar under Section 138 of the Maharashtra Land Revenue Code seeking removal of

encroachment carried out by the Petitioners herein. After the receipt of the said application the measurement was carried out under M. R. No.2363/2011 dated 17-12-2011. In the map prepared pursuant to the said measurement the encroachment carried out by the Petitioners was shown and it was observed that since the Petitioners have not carried “nimtana” measurement as also not filed any proceedings before the Civil Court seeking stay of the order passed by the Tahsildar it was necessary to direct the Petitioners to remove the encroachment in Gat No.136/3 to the extent of 0.06 Ares and hand over possession of the same to the Respondent No.1 herein. The said order of the Tahsildar is dated 20-12-2012. The Petitioners thereafter carried the matter in Appeal before the Sub Divisional Officer by way of BND Appeal No.1 of 2013. The said Appeal came to be dismissed by the SDO by his order dated 10-4-2015, however prior thereto the Petitioners had filed a Suit being Regular Civil Suit No.1016 of 2012 and in context of the present Petition, it is required to be noted that in the said Suit, the Petitioners had prayed for a declaration that they are the owners of the property including the encroached portion.

3 Notwithstanding the filing of the Suit, the Petitioners had filed an Appeal before the SDO which Appeal came to be dismissed by the SDO by order dated 10-4-2015 and resultantly the order passed by the Tahsildar dated 20-12-2012 came to be confirmed. The Petitioners thereafter filed a further Appeal before the Additional Collector Satara, being Appeal No.60 of 2015.

The said Appeal also came to be dismissed by the Additional Collector by order dated 29-10-2015. The Petitioners thereafter filed a Revision before the Additional Commissioner which came to be dismissed by the Additional Commissioner by order dated 1-7-2016. The second Revision filed by the Petitioners before the State Government has also been dismissed by the Revisionary Authority by the impugned order dated 18-11-2016. Hence all the authorities right from Tahsildar to the State Government have concurrently held that the Petitioners have encroached upon 0.06 Ares of land in Gat No.136/3 belonging to the Respondent No.1.

4 The principal contention urged on behalf of the Petitioners by the Learned Counsel Mr. Barge, is that in the absence of the falni map no credence could be given to the measurement which has been carried out by the authorities. In support of the said contention, the Learned Counsel seeks to place reliance on the judgment of a Learned Single Judge of this Court in the matter of **Vijay Shrawan Shende & Ors. Vs. State of Maharashtra & Ors.**¹ wherein it has been held that measurement could be carried out only on the basis of public record.

5 Per contra, the Learned Counsel appearing for the Respondent No.1 Mr. Patil would draw this court's attention to the fact that after the measurement bearing M. R. No.2363/2011 was carried out. The Petitioners

¹ 2009(5) Bom.C.R. 306

thereafter had themselves applied for measurement to be carried out in respect of the land belonging to the Petitioners as well as the land belonging to the Respondents, pursuant to which the measurement was carried out under Nos.4697 and 4698 dated 10-8-2012. In the said measurement also the Learned Counsel would submit that the encroachment to the extent of 0.06 Ares was revealed. It is on the basis of the measurement that the boundaries were to be fixed when the Petitioners applied for nimtana measurement, pursuant to which application the measurement was carried out and the boundaries were to be fixed. However, at the last minute, the Petitioners on 24-6-2014 chose to file an application for withdrawal of the said application for nimtana measurement which has been permitted to be withdrawn on 31-8-2015. It was also the submission of the Learned Counsel that once having filed the Suit in the Civil Court being Regular Civil Suit No.1016 of 2012 in terms of Section 138(5), the Petitioners could not have filed the proceedings by way of a Revision before the Revisionary Authority.

6 Having heard the Learned Counsel for the parties I have bestowed my anxious consideration to the rival contentions. As indicated above as many as 5 authorities have concurrently held against the Petitioners and in favour of the Respondents. The last 4 authorities have confirmed the order passed by the Tahsildar wherein on the basis of the measurement carried in M. R. No.2363 of 2011, it has been concluded that the Petitioners have encroached

upon 0.06 Ares of land in Gat No.136/3 belonging to the Respondents. The facts disclosed by the Learned Counsel for the Petitioners of the Respondents themselves applying for measurement and the said measurement carried out under Nos.4697 and 4698 as also the Petitioners thereafter applied for nimtana measurement which is a superior measurement carried out by a higher officer wherein on the basis of the said measurement the boundaries were to be fixed, however, the Petitioners chose to withdraw the said application at the last minute which has been permitted to be withdrawn on 31-8-2015. The aforesaid facts therefore dent the Petitioners' case in so far as the challenge to the orders passed by the authorities on the ground that the falni measurement map of the entire Gat No.136 is not available.

6 In my view, the said fact cannot impact the orders passed by the Revenue Authorities which orders are based on the measurement carried out and Map prepared which has been prepared on the basis of actual possession. The Judgment of the Learned Single Judge of this Court in the case of Vijay Shende & Ors (Supra) would also not aid the Petitioners to question the legality of the orders passed by as many as 5 authorities. The fact that the Petitioners chose to file proceedings after proceedings inspite of having filed a Suit in the Civil Court which can be said to be an appropriate recourse which a land owner can take in respect of the measurement or boundaries fixed, indicates the real intention of the Petitioners. It is also required to be noted

that the application filed by the Petitioners for temporary injunction in the said Suit filed by them has also been rejected by the concerned court. In that view of the matter, no case for interdiction in the Writ Jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed.

7 At this stage, the Learned Counsel for the Petitioners seeks extension of the protective order. In the facts and circumstances of the case, the said prayer is rejected.

[R.M.SAVANT, J]