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HON'BLE SRI JUSTICE S.V.BHATT

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W.P. No.35202 OF 2012

ORDER:

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The petitioner challenges order dated 08.10.2012 passed under Sections 13, 22 and 24 of the Indian Easement Act, 1882.

Through order impugned in the writ petition, the 2nd respondent held as follows:

"After having perused all the records and after having heard the versions of the petitioners and the contents of the resolution passed in the Grama Sabha, I am satisfied that there must be a passage passing through the land in Sy.No.79 to the same Sy.No. i.e. S.No.79 and S.No.206 which the petitioner and their ancestors have been enjoying this easement from the time immemorial. At this juncture, preventing the petitioner from going to his fields through the passage in S.No.79 is not correct on the part of the respondent, as there is no other go to the petitioner except to use the passage now requested for.

In the above circumstances, and as recommended by the field level staff and confirmed in the Grama Sabha, the confinement of exercise of the easement by the petitioner is hereby confirmed and allowed the petition accordingly with the following conditions:

- a) The passage should be used only in agricultural seasons for his agricultural operation.
 - b) There should not be any increase in easement without the consent of the servient owner.
 - c) There should not be any crop damage by the dominate heritage while enjoying the same.
 - d) On account of rains, if the passage is immersed with dilution, the petitioner should get it cleared by himself or by his labour.
 - e) He should carry out repairs to the passage from time to time if there is any land erosion or sand erosion.
 - f) He should use the nets to their animals while passing through the passage in Sy.No.79.
- The respondent and the servient owner should obey these orders forthwith."

Hence, the writ petition.

The petitioner challenges the order on several grounds including the obligation on petitioner as servient owner to provide Rasta as directed by the 2nd respondent. The 4th respondent if so advised has to file a suit of reliefs including ingress and egress from petitioner's land. The 2nd respondent being Executive Magistrate cannot and could not have passed the impugned order.

The Assistant Government Pleader fairly states that a civil dispute is entertained by the 2nd respondent in respect of private property between petitioner and 4th respondent and the order impugned in the writ petition is passed.

None appears for 4th respondent.

Prima facie, after perusing the order impugned in the writ petition, this Court is of the view that the 2nd respondent has not only discharged the duty of civil Court but has imposed various terms and conditions in the manner of enjoyment of right. There are disputed questions of fact which need consideration of law in the light of facts established by respective parties and mere convenience of 4th respondent ought not to have guided 2nd respondent to pass the order impugned in the writ petition. For the above reasons, the 4th respondent, if so aggrieved, has to work out remedy in a properly instituted suit and the writ petition is ordered by setting aside the order dated 08.10.2012. No order as to costs.

Miscellaneous petitions pending if any shall stand closed.

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S.V.BHATT, J

Date:26.08.2016
Stp