

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

WRIT PETITION NO. 5028 OF 2017

BABURAO KASHIRAM CHOUDHARI AND OTHERS  
VERSUS  
KASTURABAI RAMKRISHNA AGALE

...

Advocate for Petitioners : Mr. Patil Atmaram J

Advocate for Respondent : Mr. G.V. Wani

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**CORAM : V. K. JADHAV, J.**  
**DATED : 6<sup>th</sup> DECEMBER, 2017**

**PER COURT:-**

1. Being aggrieved by order dated 17.2.2017 passed by the C.J.J.D. Jamner below Exh.22 in R.C.S. No. 89 of 2015, the original plaintiffs have approached this court.

2. Learned counsel for the petitioners-original plaintiffs submits that the trial court by order below Exh.6 and after hearing, restrained the respondent-defendant temporary from causing any sort of obstructions to the petitioners-plaintiffs in the suit way available to them from house No. 286 till final decision of the suit. Learned counsel submits that despite the said order, the respondent defendant obstructed the said way and even abused the petitioners in filthy language and also threatened them. Consequently, the petitioners have lodged a complaint in the outpost police station at Jamner and also approached the Superintendent of Police, Jalgaon

since the concerned police station has not taken any action. Learned counsel submits that the respondent-defendant and her sons are obstructing the way and even they installed one wooden gate on the said way and locked it. It is thus difficult for the petitioners-plaintiffs to keep the agricultural produce in their house by using the said road and thus they are facing difficulties. Learned counsel submits that even though application Exh.22 came to be filed by the petitioners for getting police aid, the trial court has rejected said application on the ground that no specific date has been mentioned about installation of gate on suit way in the application Exh.22 and even the said fact of installation of gate does not find place in the complaint filed with the police station and with the Superintendent of Police, Jalgaon. Learned counsel submits that the petitioners have approached the police station, the Superintendent of Police, Jalgaon when they were subjected to abuses and threats and since no action was taken, approached the court after the respondents installed the gate on the suit way and locked the gate. Learned counsel submits that the trial court ought to have granted police aid to the petitioners.

3. Learned counsel for the respondent-defendant submits that police aid can be granted in exceptional cases. In the instant case, the petitioners have not mentioned about the installation of gate in their application submitted to the concerned police station and even

before the Superintendent of Police, Jalgaon. Further, no specific date has been mentioned in the application about installation of gate on the suit way. Learned counsel submits that the respondent is 80 years of old lady and it is not possible for her at such an old age to obstruct the suit way despite the court's orders. The petitioners by way of filing application Exh.22 are pressurizing the respondent. Learned counsel submits that further aggrieved by the order of temporary injunction passed by the trial court, the respondent preferred Misc. civil application in the district Court and the same is still pending.

4. On careful perusal of the contents of application Exh.22, it appears that initially, the petitioners have approached the concerned police station against the abuses given by the respondent and threats given to them while obstructing the way. Thereafter, owing to the inaction on the part of concerned police station, the petitioners approached the Superintendent of Police, Jalgaon by filing application on 19.9.2016. In para 3 of the application Exh.22, it has been specifically contended that the respondent has installed wooden gate and with the help of her sons, obstructing the suit way by putting lock on the said wooden gate. In my considered opinion, the petitioners have made out a case for grant of police aid. Despite the order of trial court, restraining the defendant from causing any

obstruction in the suit way, if the respondent-defendant is obstructing in the suit way, in the manner as stated in application Exh.22 and if concerned police station and the Superintendent of Police, Jalgaon are not taking action under the pretext that the matter is pending before the court, it is for the Civil Court to direct the concerned police station to grant police aid to the petitioners to clear the suit way, in case any obstructions is created, as alleged in the application Exh.22. Thus, the impugned order is liable to be quashed and set aside. The petitioners are entitled for the police aid. Hence the following order:-

#### O R D E R

- I. Writ petition is allowed in terms of its prayer clauses. No costs.
- II. The impugned order dated 17.02.2017 passed below Exh.22 is hereby quashed and set aside. Application Exh.22 is allowed in terms of its prayer clauses.
- III. Writ petition is accordingly disposed of.

**( V. K. JADHAV, J.)**