

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7281 OF 2016
(Latabai Dattatray Gadhave Vs. The State of Maharashtra and others)

Ms.S.M.Zaware, Advocate for the petitioner.
Mr.Sandeep Gorde Patil, Advocate for respondent Nos. 4 to 6.
Ms.K.S.Bhale, Advocate for respondent Nos.7A to 7D and 9.
Mr.S.K.Tambe, AGP for respondent Nos. 1 to 3.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 12/07/2017

PER COURT :

1. This matter was heard for quite some time.
2. While issuing notice on 12/07/2016, this Court (Coram : Sunil P.Deshmukh, J.) had passed the following order :-

“1. Learned counsel for the petitioner submits that she has instructions to state that the orders passed hitherto have been without any *panchnama* being executed by the Tahsildar and that reference occurring in the impugned order may be erroneous.

2. As such, issue notice to the respondents returnable on 23rd August, 2016.

3. Learned Assistant Government Pleader waives service for respondents No.1 to 3.

4. Till returnable date, there shall be ad-interim stay to the operation of the order passed by the Tahsildar, Rahata as well

as Sub Divisional Officer, Shirdi Division, Shirdi.

5. In addition to court process, the petitioner shall serve the respondents privately by any legally acceptable mode and to file affidavit along with tangible proof of service. In case of failure to serve the respondents privately and file service affidavit by returnable date, the ad-interim relief would cease to operate.”

3. Issue is with regard to a cart way and which was subject matter of the *Rasta* Case No.14/2013. A spot inspection was also conducted on 04/06/2013. Based on the *panchnama* and the spot inspection, order dated 24/12/2013 was passed and *Rasta* Case was allowed.

4. There is no dispute that there are concurrent findings of respondent Nos.2 and 3, Tahsildar and S.D.O. concluding that a cart way did exist and would be an appropriate way between Land Gat No.48 and 49 keeping in view that the dividing line between these two lands is a *Gavthan* road.

5. However, on account of the ad-interim order of this Court dated 12/07/2016, the impugned judgments have been stayed. Mr.Gorde, learned Advocate appearing on behalf of the landlords/respondent Nos. 4, 5 and 6 submits that they are practically landlocked. The

cart way was being used for several decades and considering all factors and records available, the authorities below have rightly upheld the said cart way.

6. It cannot be ignored that RCS No.717/2013 has been preferred by the petitioner and the same is pending adjudication. The report of the TILR has already been placed on record before the Trial Court. It is obvious that the said suit may not be adjudicated upon expeditiously looking at the pendency of the matters and since it is just about 4 years old. The petitioner has filed an application for seeking interim orders/injunction under Order 39 Rule 1 and 2 of the CPC and the same is pending decision.

7. It would not be a matter of debate and especially in the light of the law laid down by this Court in the matter of Vishwanath Rambhaji Bhalerao and another Vs. Usha Pralhad Kasbe [2011(1) Mh.L.J. 603] that as the petitioner has preferred a civil suit, the impugned concurrent findings shall be subject to the result of the said proceedings. Mr.Gorde, however, strenuously submits that he needs to be brought out of the situation of being a landlocked/owner of the agricultural fields. He, therefore, prays that the interim order passed by this Court should be vacated.

8. Considering the above and to balance the equities keeping in view that the interim order of this Court is in operation for almost a year, I deem it proper to dispose of this petition by granting liberty to the litigating sides to advance their submissions before the Trial Court on the application for seeking injunction under Order 39 Rule 1 and 2. The interim relief granted by this Court would continue only till the result of the said application within a time frame.

9. This petition is, therefore, disposed of and the interim relief granted by this Court on 12/07/2016 shall be continued for a further period on the following conditions :-

[a] The Trial Court is directed to decide the injunction application as expeditiously as possible and preferably on or before 29/09/2017, if not already decided.

[b] The order of this Court dated 12/07/2016 shall stand continued only upto 29/09/2017 and shall merge with the order of the Trial Court on the application for injunction, whichever is earlier.

[c] Needless to state, since the order dated 12/07/2016 was passed without hearing the respondents, who are defendants in the suit, the Trial Court shall not be influenced by the said order while deciding the application for injunction.

[d] Needless to state, if either of the litigating sides seek unnecessary adjournments only with the intention of prolonging the hearing of the injunction application beyond

29/09/2017 or for delaying the hearing of the injunction application, the Trial Court would be entitled to reject such adjournment motion and impose costs on the parties.

(Ravindra V.Ghuge, J.)