

Anand

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

WRIT PETITION NO.3533 OF 2016

Smt. Bismilla Hazrat Kulkarni & ors.

.Petitioners

Vs.

The State of Maharashtra & ors.

.Respondents

Mr.Sandesh Patil a/w. Mr. Chintan Shah i/b. Mr.P.P.Jadhav, Advocate,
for the Petitioners

Mr.U.R.Mankapure, Advocate, for the Respondents No.3 to 7, 27

Mr.Sachin Kankal, AGP, for the State

CORAM : R.G.KETKAR, J.

DATE : 09.03.2017

P.C.

. Heard Mr. Patil, learned counsel for the Petitioners, Mr.
Mankapure, learned counsel for the Respondents 3 to 7 & 27 and
Mr. Kankal, learned AGP for the State.

2. By this Petition under Article 227 of the constitution of India, the Petitioners, hereinafter referred to as 'Plaintiffs' have challenged the Judgment and Order dated 06.01.2016 passed by the learned C.J.S.D., Sangli below Exh.5 in R.C.S.No.426 of 2015 as also the Judgment and Order dated 14.03.2016 passed by the learned District Judge-4, Sangli in Civil Misc. Appeal No.21 of 2016. By these Orders,

the Courts below rejected the Application made by the Plaintiffs for injunction restraining the Defendants from causing any sort of obstruction to their peaceful possession over the following properties.

GAT NUMBERS	AREA H R
1532/1	3.94
1592	0.91
1571	0.56
1563	2.11

3. In support of this Petition, Mr. Patil submitted that the proceeding was filed under Section 143 of the Maharashtra Land Revenue Code, 1966 (For short “Code”). The Tahsildar had allowed the Application made by the Respondents/Defendants and sanctioned 8 feet cart road from the boundaries of Gat Nos.1532/1, 1592, 1571, 1563. The Plaintiffs are the owners of Gat Nos.1532/1 & 1563. He submitted that the Plaintiffs have challenged the Order dated 07.11.2015 passed by the Tahsildar, Palus in this suit and have sought perpetual injunction restraining the Defendants from causing obstruction to the Plaintiffs' possession over the suit property. He invited my attention to the rough hand sketch at page No.26, village map at page No.27 as also spot inspection panchanama dated 14.08.2015. A perusal of the spot panchanama as also the Order of Tahsildar shows that Tahsildar has

sanctioned 8 feet cart road through the lands of the Plaintiffs. In other words, the Order passed by the Tahsildar is contrary to Section 143 of the Code. Section 143 empowers the Tahsildar to sanction right of way over the boundaries of survey numbers. Instead of sanctioning cart way over the boundaries, the Tahsildar has sanctioned the way through the lands of the Plaintiffs. He, therefore, submitted that the Order passed by the Tahsildar is contrary to Section 143 of the Code. The Courts below were not justified in rejecting the Application made by the Plaintiffs.

4. On the other hand, Mr. Mankapure supported the impugned Orders. He submitted that the Tahsildar has passed Order on 07.11.2015 after considering the maps, spot inspection panchanama as also contentions raised before him as also after considering the material on record in exercise of powers under Section 143 of the Code as also Section 5 of the Mamlatdars' Court Act, 1906, the Tahsildar had sanctioned 8 feet cart road over the boundaries of Gat No.1532/1. He submitted that four feet road is sanctioned over the boundaries of the Defendants' property and the remaining four feet from the boundaries of the Plaintiffs' property. He further submitted that the Courts below as a matter of fact found that except the road suggested by the Tahsildar, there is no other way.

5. I have considered rival submissions advanced by the learned counsel for the parties. I have also perused the material on record.

6. Section 143 of the Code reads thus :-

“143. Right of way over boundaries.-

(1) The Tahsildar may inquire into and decide claims by persons holding land in a survey number to a right of way over the boundaries of other survey numbers.

(2) In deciding such claims, the Tahsildar shall have regard to the needs of cultivators for reasonable access to their field.

(3) The Tahsildar's decision under this section shall, subject to the provisions of sub-sections (4) and (5), be subject to appeal and revision in accordance with the provisions of this Code.

(4) Any person who is aggrieved by a decision of the Tahsildar under this section may, within a period of one year from the date of such decision, institute a civil suit to have it set side or modified.

(5) Where a civil suit has been instituted under sub-section (4) against the Tahsildar's decision, such decision shall not be subject to appeal or revision.”

7. A perusal of Section 143 as also the spot inspection panchanama and findings recorded by the Courts below, prima facie, it

cannot be said that the impugned Orders are passed in violation of Section 143 of the Code.

8. In view thereof, no case is made out for invocation of powers under Article 227 of the Constitution of India. Hence, Petition fails and same is dismissed. Liberty is reserved to the Plaintiffs to file an Application for disposal of the suit in a time bound manner. If such Application is filed, the learned trial Judge will decide the suit on the basis of evidence on record and on its own merits uninfluenced by the observations made herein.

(R.G.KETKAR, J.)