IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 10514 OF 2016
WITH
CIVIL APPLICATION NO.2702 OF 2016

The Poona Stud Farm Pvt Ltd. ..Petitioner
Vs.
State of Maharashtra & Ors ..Respondents

Mr. Devvat Singh a/w Mr. Dilip Kamath i/b Lawfin & Associates for the Petitioner
Mr. S. D. Rayrikar AGP for the Respondent Nos.1 to 4

CORAM : R. M. SAVANT, J.
DATE : 27th JANUARY, 2017

P.C.

1 The Writ Jurisdiction of this Court is invoked against the order dated 4-4-2016 passed by the Sub Divisional Officer (SDO), Haveli, Sub Division Pune. By the said order, the Revision Application filed by the Petitioner against the order dated 9-7-2013, came to be confirmed.

2 The proceedings in question are under Section 5 of the Mamletdars Courts Act 1902 (for short the said Act). The Respondent Nos.5 to 7 invoked the said provision on the ground that the Petitioner herein has obstructed their right of way by constructing a gate on the road on the shiv i.e. boundary of village Manjari and Hadapsar, Pune. The said application was opposed to on behalf of the Petitioner herein by filing a reply. In the said reply the stand taken was that the application filed by the Respondent Nos.5 to 7

was not within the time contemplated under the said Section 5 and that in view of the Development Plan Road (for short DP Road). The road in respect of which the application was made under Section 5 was deleted. The Tahsildar, Haveli by his order dated 9-7-2013 allowed the said application and directed the Petitioner to remove the obstruction on the said road on the shiv of Village Manjari and Hadapsar. The Tahsildar held that the application filed was within time. The Tahsildar went into the aspect of the existence of the said road as also its user by the villagers since long past and recorded a finding accordingly. The Tahsildar rejected the contention sought to be raised on behalf of the Petitioner that the application was not filed within time and that on account of the DP Road, the road on the shiv in respect of grievance was made by the Respondent Nos.5 to 7, was deleted.

3 Aggrieved by the said order dated 9-7-2013 passed by the Tahsildar directing the removal of the obstruction on the road on the shiv, the Petitioner filed a Revision before the SDO Haveli. The SDO has by the impugned order dated 4-4-2016 rejected the Revision application. The SDO has confirmed the finding recorded by the Tahsildar that the application as filed was within time. The SDO has adverted to the fact that the Petitioner herein has taken contrary stands i.e. on the one hand the contention is that the road does not pass through its land and on the other hand contention is that the road in question is not in use since the last 50 years as claimed by the

Respondent Nos.5 to 7. The SDO on the basis of the material on record has come to a conclusion that the road in question passes on the shiv of Village Manjari and Hadapsar and that since the road is on the shiv, the same belongs to the State Government and from the material on record it is disclosed that the road has been closed by the Petitioner. The contention raised on behalf of the Petitioner that there is a DP Road has been rejected by the SDO on the ground that the same is only a proposed road. The SDO accordingly by the impugned order dated 4-4-2016 has dismissed the Revision Application filed by the Petitioner.

4 The Learned Counsel for the Petitioner Mr. Singh would seek to reiterate the contentions which were raised before the authorities below namely that the application filed by the Respondent Nos.5 to 7 was not filed within the time contemplated under Section 5 of the said Act. That on account of the DP Road, the road in respect of which grievance is made stands deleted and that the Petitioner has no grievance about the use of the road by the villagers but they have only grievance about the removal of the gate pursuant to the impugned orders

5 Per contra the Learned AGP appearing for the State would support the impugned order. The Learned AGP would also point out the court that the Petitioner has filed a Suit being Special Civil Suit NO.1125 of 2013 challenging

the order dated 9-7-2013 passed by the Tahsildar.

6 Having heard the Learned Counsel for the parties, I have considered the rival contentions. In the instant case as indicated above, the provisions of Section 5 of the said Act have been invoked as an obstruction has been caused to the Respondent Nos. 5 to 7 who are the villagers of Village Manjari, Taluka Haveli. The obstruction is by way of putting up a gate on the road on the shiv which the Respondent Nos.5 to 7 claimed has been used by the villagers since long past. The cause for filing the application under Section 5 was the obstruction to the villagers from using the said road caused on account of the gate which has been put up by the Petitioner. As indicated above the authorities below hve concurrently recorded that the application filed is within time. Both the authorities on the basis of the material on record have also concurrently recorded that the road passes on the shiv (boundary) of two villages Manjari and Hadapsar in Pune. Both the authorities below have recorded that the road on the shiv vests in the Government and therefore the Petitioner could not have obstructed the villagers from using the said road by putting up a gate. In so far as the contentions raised on behalf of the Petitioner that by virtue of the DP road there is an alternative road available and that the road in respect of which the complaint is made by the Respondent Nos.5 to 7 stands deleted, has rightly been rejected by the authorities below. Merely because the DP road is proposed, would not mean that the road

customarily used by the villagers since long past can be obstructed by a party. More so in the instant case where the road is on the shiv i.e. the boundary of the two villages i.e. Manjari and Hadapsar.

7 It is also required to be noted that the Petitioner has filed a Suit being Special Civil Suit No.1125 of 2013 in the Court of Learned Civil Judge Senior Division, Pune, in which from paragraph 4.15 of the above Petition it can be seen that an application for interim injunction was moved which was rejected, against which the Petitioner has filed an Appeal in the District Court wherein the impugned order passed by the SDO, also seems to be made a subject matter. Hence taking all the facts into consideration cumulatively, there is no merit in the challenge raised to the impugned order. The Writ Petition is accordingly dismissed.

9 In view of the dismissal of the above Writ Petition, the Civil Application No.2702 of 2016 does not survive and to accordingly stand disposed of as such.

[R.M.SAVANT, J]