

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

903 WRIT PETITION NO.2678 OF 2018

Raghu S/o Shrirang Dhobale
and others

... Petitioners.

Versus

Arun S/o Raosaheb Dhobale
and others

... Respondents.

....

Mr. Prakash M. Shinde, Advocate for the Petitioners.

Mr. Nitin L. Dhoble, Advocate for Respondent Nos.1 to 5.

....

CORAM : V.L. ACHLIYA, J.

DATED : 11th APRIL, 2018

PER COURT:-

1. By this petition under Article 227 of the Constitution of India, the petitioners- defendants have challenged the order dated 09.11.2011 passed in Misc. Civil Appeal No. 54/2014 by District Judge-4, Ambajogai, Dist. Beed. By the impugned order, the learned District Judge allowed the appeal and set aside the order rejecting the application for temporary injunction (exhibit-5) passed in R.C.S. No.225/2012 by 2nd Joint Civil Judge, Junior Division, Kaij, Dist. Beed and further allowed the application temporarily restrained the petitioners from obstructing the suit way proceeding from Survey No.50, 49, 45 and meeting the old Anegao-Bhalgaon cart road, which passes through Survey No.44, 45, 48 and 56. Being aggrieved, the petitioners have preferred this petition.

2. Heard the learned counsel for the petitioners and respondents. Perused the rival pleadings, the orders passed by the trial Court as well as the appellate Court.

3. Learned counsel for the petitioner assailed the impugned order with contention that the appellate Court has unnecessarily interfere with the order passed by the trial Court. By referring the rival pleadings and the reasons and findings recorded by the trial Court, it is argued that the suit way is not in use for the period of more than 30 years. The owners of the agricultural land are using the new way created after the resettlement of village Bhalgaon. It is further contended that the reasons and findings recorded by the appellate Court are perverse and not sustainable in law.

4. On the other hand, the learned counsel representing the respondents supported the order passed by the appellate Court. By referring the rival pleadings and the documentary evidence placed on record in support of the case of the petitioners, learned counsel contended that the existence of the suit way i.e. cart way has not been disputed by the petitioners-defendants, but claimed that the suit way is not in use for a long time. It is contended that non use of any public road itself not amounts to extinction of public road. In this context, the learned counsel has referred and relied upon Section 21 of the Maharashtra Land Revenue Code, 1966 (for short, 'MLR Code') which deals with procedure to follow to notify the extinction of public road, lane or path. It is contended that the reasons and finding

recorded by the trial Court being perverse, contrary to law, the appellate Court has rightly set aside the order passed by the trial Court.

5. On due consideration of submission advanced, I am of the view that the order impugned calls for no interference in exercise of writ jurisdiction under Article 227 of Constitution of India. The order passed by the appellate Court is perfectly legal, proper and fully in consonance with exercise of powers of appellate authority. Respondent-plaintiffs have approached with specific case that the suit way is in existence for a fairly long period i.e. more than 60 years. Petitioners have obstructed the suit way by encroaching upon the suit way by planting sugarcane crop and thereby prevented the respondents from using the way to have access to their field. It is further case of the respondents that the alternate way suggested by the petitioners which passes from the boundaries of agricultural fields can be used as foot way by the individual and for taking animals and same cannot be used for carrying the bullock cart, tractors, truck etc. to approach their respective fields.

6. In the written statement filed by petitioners-defendants, they have not disputed the material facts pleaded in the plaint i.e. the existence of suit way by respondents-plaintiffs for a long time. It is the case of the petitioners-defendants that the use of the suit way has been stopped by the villagers after the resettlement of village Bhalgaon. Thus, the existence of the suit way is not disputed by the petitioners-defendants. According to

the petitioners-defendants, the use of the sue way has been stopped by the villagers. In the back-ground of undisputed facts that suit way in existence, the appellate Court has examined the matter in depth in the light of provisions of Section 21 of the MLR Code. The appellate Court has observed that elaborate procedure has been laid down under Section 21 of MLR. Code for extinction of public road, pathway, lane etc. On due examination of the rival pleadings, the appellate Court has reached to the conclusion that in absence of the procedure prescribed under Section 21 of the MLR Code being followed and notification issued by the Government as to extinction of suit way, use of the suit way cannot be obstructed by petitioners-defendants.

7. The appellate Court has examined the matter in depth and found the reasons and findings recorded by the trial Court as perverse and not sustainable in law. In this context, the reference can be made to the observations made by appellate Court in para nos.9 to 13 of judgment, which reads as under:

“09 From bare perusal of the said provision, it is seen that a public road does not cease to be so, on mere non usage or discontinuance by the public at large but, elaborate process of declaration of its extinguishment is required to be undertaken. Unless that is done, one cannot say that the road has ceased to be a public road. The said road is shown to be a cart road even in the village map. This leaves no doubt about the existence of this road and hence its extinguishment has to be by procedure established by law. But there is nothing on record to show that procedure u/s 21 of the

Maharashtra Land Revenue Cod, 1966, was followed and the said cart way was extinguished. Thus prima facie existence of road, is seen even from the bare reading of the panchanama relied on by the trial Court in refusing the relief.

10. *The trial Court has relied on the provisions of the Mamlatdar's Court Act, to dislodge the Appellants, holding, it to be an alternate efficacious remedy. The trial Court did not consider the provision to Sec.22, which gives primacy to the decision making by a Civil Court and states that the decision rendered by a Mamlatdar would not be conclusive. This shows that the civil Court alone is the final arbiter of disputes, even though provision for ;immediate recourse to revenue authorities in case of obstruction, impediment etc is made in the Mamlatdar's Court Act. Hence the conclusion of the trial Court as to alternative efficacious remedy is erroneous on the plain reading of Sec. 22 of the said Act.*
11. *The trial Court refused the interim relief also on the count that the Appellants suppressed material fact that they have brought some portion of the cart way under cultivation. This would have been material had it being a dispute of easementary rights. The road or the right of way which is sought to be kept open for throughfare, is a public road and conveyance over it by general public is as a matter of right, unless the way is restricted to extinguished by due process of law. It is true that the panchanama does disclose that there has been cultivation by the Appellants also. But the panchanama also discloses that on disclosure of this fact, certain encroachers had agreed to remove the obstruction. Even other wise, a Court is empowered to mould the grant of relief, which would best serve the purpose. As sated earlier, had it been a dispute on the basis of easementary*

rights, the trial Court could have been right in refusing the relief. But in cases of the present nature, when it is brought to the notice of a Court that a public road is blocked, then the dispute ceases to be a dispute between two individuals and the decision on this dispute has wide ramifications as interests of public at large is involved in such matters. Roads are like arteries any obstruction to them is a serious hazard and beginning of lawlessness. It is in public interest that public interest that public road are kept open for usage at any costs and the trial Court should ensure this zealously. The trial Court could have directed even the Appellants to cease and desist from causing any obstruction on the said road and this course of action would not only have furthered the cause of equity but would have ensured adherence to law. This is how equity and law, which are many a times portrayed to be competitors, would go hand in hand and thereby protect interests of not only the litigating parties but also ensure public good by keeping open the public road. The trial Court having failed to do so, has failed to exercise the jurisdiction, vested in it by law and equity and committed a jurisdiction error.

12. *Existence of public road-cart way from Anegaon to Bhalgaon is prima facie established from the undisputed village map. This village map also discloses the foot way from village Bawachi along the eastern boundary of S. No.45,50,56. The Defendants themselves have filed an order dated 06/06/2001 passed by the Tehsildar, Kaij, in exercise of powers u/s143 of the Maharashtra Land Revenue Code, permitting use of vahiwat road on the embankment of S. Nos. 50 and 55 as a cart way. There is nothing on record to show that this order was set aside or modified. The Respondents denying its usage and relying on panchanama showing obstruction thereto, is a*

sufficient indicator of denial of right of usage or thoroughfare, though causing any such impediment is denied by the Respondents. The road being a public road, the Appellants, Respondents like any other common public are entitled for its unhindered usage. No prejudice would be caused to either of the parties if they are directed to keep the said road open for public usage. But the trial Court failed to consider these material aspects.

13. *The inferences drawn by the trial Court are not borne from record and the trial Court failed to exercise jurisdiction vested in it. The order is therefore indefensible and requires interference by moulding relief to be granted. It is made clear that these are prima facie observations and the trial Court should proceed in accordance with law with the trial. As the proceeding in trial Court has already passed the critical limit of 5 plus pendency, parties are directed to cooperate with the trial Court for early disposal of the matter.”*

8. Thus, In the light of reasons recorded by the appellate Court to set aside the order passed by the trial Court, I am of the view that no case is made out to entertain the petition in exercise of powers under Article 227 of the Constitution of India. Accordingly, the petition is dismissed. Trial Court is directed to expedite the hearing of suit and decide the same within the period of one year from passing of this order.

(V.L. ACHLIYA)
JUDGE