

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7324 OF 2018

MOHAMMAD AMIR HAMJA MULLA AND ANOTHER
VERSUS
THE ADDITIONAL COLLECTOR OSMANABAD AND OTHERS

...
Advocate for Petitioners : Mr. Patil Laxmikant C.
AGP for Respondents 1 and 2: Mr. S.B. Pulkundwar
Advocate for Respondent No.3 : Mr. S.N. Patne
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CORAM : N. M. JAMDAR, J.
DATED : 12 DECEMBER 2018

PER COURT:-

1. Heard learned counsel for the parties.
2. The petitioners have challenged the order passed by the Additional Collector, Osmanabad rejecting the revision application filed by the petitioner and confirming the order passed by the Tahsildar dated 7 March 2017. Learned counsel for the respondents has drawn my attention to averments made in para 8 of the petition, which reads thus:-

“8. The petitioner says and submit that, the petitioner and respondent No.4 has filed Regular Civil Suit No. 245 of 2017 before the learned Civil Judge, Junior Division, Omerga thereby seeking permanent injunction against the

Respondent No.3 as there is no any cart way available to him to cultivate land Gat No. 929 and also challenging the judgment and order dated 07.03.2017 passed by the learned Tahsildar, Omerga which is pending for adjudication as the present respondent Nos. 3 not appearing in the said suit.”

From this averment it is clear that the petitioner has approached the civil court challenging the very same order of the Tahsildar and also sought an injunction.

3. The learned counsel for the respondents states that he has not yet been served with a notice of the suit. Since the parties have already approached the civil court in respect of easementary and other rights, it is not necessary to keep this petition pending.

4. At the time of issuance of notice in this petition on 10 July 2018, this Court has granted an ex parte ad-interim order. The said ad-interim order is to the effect of staying the implementation of the order dated 7 March 2017 passed by the Tahsildar.

5. Since I am not entertaining this writ petition on the ground that a civil suit is pending, the position which is being operating in this petition since 10 July 2018 will have to be continued for some time. It is however, thereafter the petitioner will seek necessary relief in the pending civil suit.

6. Accordingly, the ad-interim order granted in this petition to continue for a period of four weeks from today. It is made clear that any further protection in favour of the petitioner in the civil suit will be strictly on its own merits without being influenced by the ad-interim order that is operating in this petition. The writ petition is accordingly disposed of.

7. All contentions of the parties are kept open in the pending civil suit filed by the petitioner.

8. The parties will appear before the civil court where the suit is filed by the petitioner on 20 December 2018.

(N. M. JAMDAR, J.)

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