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

WRIT PETITION NO. 7739 OF 2013

- | | | | |
|----|-----------------------------------|---|---------------|
| 1. | Shri Shivshankar Gopal Mali |] | |
| | Age-Major, Occ.- Business, |] | |
| | R/o. Yashwant Nagar, Hupari, |] | |
| | Tal.- Hatkangle, Dist.- Kolhapur. |] | |
| 2. | Yashwant Audyogik Sahakari |] | |
| | Vasahat |] | |
| | Yashwant Naik Nagar, Hupari, |] | |
| | Dist. Kolhapur. |] | .. Petitioner |

Vs.

- | | | | |
|----|--------------------------------------|---|----------------|
| 1. | The State of Maharashtra |] | |
| | Through the Secretary, |] | |
| | Rural Development Department, |] | |
| | Mantralaya, Mumbai. |] | |
| 2. | The Collector, Kolhapur |] | |
| | Having office at Collector's Office, |] | |
| | Kolhapur. |] | |
| 3. | Rayat Shikshan Sanstha, Satara |] | |
| | Through its Secretary, |] | |
| | Satara. |] | |
| 4. | The Arts, Commerce and Science |] | |
| | College, Hupari |] | |
| | Through its Principal, |] | |
| | Having office at Hupari, |] | |
| | Tal.-Hatkanagale, Dist.-Kolhapur. |] | |
| 5. | Laxmidevi Girls School, Hupari, |] | |
| | Through its Principal, |] | |
| | Having office at Hupari, |] | |
| | Tal.-Hatkanagale, Dist.-Kolhapur. |] | .. Respondents |

Mr. S. R. Ganbavale for the Petitioner.

Mrs. Rupali M. Shinde, AGP for the Respondent Nos.1 & 2.

Mr. Sanjeev P. Kadam for the Respondent Nos.3 to 5.

**CORAM : R. M. SAVANT &
K. K. SONAWANE, JJ.**
DATE : 27th AUGUST, 2018.

ORAL JUDGMENT (Per K. K. Sonawane, J.)

1. Heard. Rule. Rule made returnable forthwith and heard with the consent of both the sides.

2. The Petitioner by invoking the writ jurisdiction of this Court under Article 226 of the Constitution of India is agitating the validity and propriety of the order dated 17.06.2011 passed by the District Collector, Kolhapur. The dispute pertains to the public road leading South-North direction passing through the gairan land belonging to the Government bearing Gat No. 843/A located within the vicinity of village Hupari, Taluka Hatkanagale, District Kolhapur.

3. According to Petitioner, the disputed road was in existence since the year 1976 and it was being utilized as an approach road by the industrialists of Yashwant Industrial Co-operative Society and the residents of the nearby area for access to their premises/residence. It was also convenient for the Petitioner and other residents of the area to go to nearby village Rendal and Yalgud without any difficulty as well as to visit to Datta Temple easily by using the disputed road. Meanwhile, the respondent No.2-District Collector, Kolhapur allocated the portion of gairan land bearing Gat

No. 843/A admeasuring 1 H 20 R and 1 H 51.5 R land to the Respondent-Educational Institution for establishing a college and girls' school. It was directed to the Respondent-Educational Institution to keep reserved the space for 40 feet wide road on the western side of the land Gat No. 843/A allocated in its favour. The permission to erect the compound wall was also accorded to the Respondent-Educational Institution. The Petitioner's grievance is that taking undue advantage of the permission to construct the compound wall, the Respondent-Educational Institution started creating obstruction and hindrance in the right to use the road by the Petitioner and other residents of the locality. There was exchange of correspondence between the Petitioner and the Respondents, but did not evoke any result. The Petitioner and other members of the Industrial Society approached to the Revenue Authority by filing multiple proceedings but all efforts failed. Eventually, Respondent No.2-District Collector, Kolhapur, without giving notice to the Petitioner and without any reasonable cause, unilaterally passed the impugned order dated 17.06.2011 and issued directions to close the disputed road permanently and extinguished the rights of the Petitioner and other residents to utilize the road as public road. The impugned order of the District Collector dated 17.06.2011 is under challenge in the present Writ Petition.

4. Learned Counsel for the Petitioner submitted that the impugned order passed by the Respondent No.2-District Collector is illegal, arbitrary and against the principles of natural justice. The impugned order came to be passed by the Respondent No.2-District Collector without any authority. The Review Petition No. 1 of 2011 was pending adjudication on merits. But the Respondent No.2-District Collector overlooked this material aspect and passed the impugned order without application of mind.

5. The learned Counsel for the Respondent Nos.3 to 5 raised objection and submitted that the portion of the land Gat No. 843/A was allotted to the Respondent-Educational Institution for establishing a college and girls school. It was also directed to keep reserved the open space on western side of Gat No. 843/A for 40 feet wide road. According to the learned Counsel for the Respondent Nos.3 to 5, alternate provision for 40 feet wide road has already been made by the Respondent keeping sufficient space reserved for 40 feet wide road on the western side of the land. It would not cause any inconvenience or hardship to the Petitioner and other residents of the locality. It would facilitate them for easy access to their premises/residence. The learned Counsel further explained the geographical situation of the premises of Educational Institution erected in the land Gat No. 843/A. He harped on the circumstances

that the disputed road was in existence in between the building of the girls school, ladies hostel on one side and the college building as well as premises of Administration of the Respondent Nos.3 to 5 on the other side. The alleged disputed road used to bisect and split up the allocated land Gat No. 843/A into two divisions. He asserted that the lands were allocated for girls high school, playground and for college building. In case, the general public is allowed to have access through the disputed road for egress and ingress, it would cause disturbance and hindrance in the educational activities as well as utilization of the land in question in proper manner. He submits that it is incumbent for the Respondents to use the portion of land for playground and other activities etc. The disputed road would cause danger to the safety and privacy of the girls school and its hostel as well as would cause disturbance in the school activities. The learned Counsel urged that the impugned order passed by the District Collector is just, proper and reasonable and no interference is warranted at the behest of Petitioner.

6. We have given anxious consideration to the arguments advanced on behalf of both sides. We have also delved into the documents produced on record as well as geographical situation of the existing disputed road and premises of the Educational Institution. We do not find any sort of infirmity or illegality, in the

impugned order passed by the District Collector. Admittedly, the location of the existing disputed road caused division of the land Gat No. 843/A in two parts. The building of the girls high school and hostel etc. are found located on the one side of the road whereas the college and other premises of the Educational Institution are seen located on the other side of the road. Definitely, the disputed road would create difficulties and hindrance for utilizing the entire premises as one unit to the Educational Institution. The purpose and object for allocation of the land was to construct the girls' school, hostel and used it as playground for the students etc. In such circumstances, it would hard to believe that the impugned order came to be passed in arbitrary manner without application of mind.

7. The concerned Tahasildar Shri Birajdar filed Affidavit-in Reply on behalf of Respondent No.2-District Collector and deposed that the land Gat No. 843/A was gairan land belonging to the State Government. It was allotted to the Respondent-Educational Institution for construction of building of girls' high school as well as building of the college and its playground. The disputed road was not the official road declared in the Government record. The land Gat No. 843/A was vacant and barren land, therefore the members of the Yashwant Industrial Co-operative Society and the residents of nearby locality used to avail the land for access to their

premises/residence. The portion of the land came to be allocated to the Respondent-Educational Institution subject to condition that the Respondent-Educational Institution shall leave sufficient space for 40 feet wide road on its western side to facilitate the residents of the area to use it for access to their premises/residence. It has been contended that the Petitioner or anyone else on behalf of residents of the locality did not raise any objection to the allotment of the land in favour of the Respondent-Educational Institution.

8. There is no any dispute that the Respondent-Educational Institution has already left sufficient space on western side of the land Gat No. 843/A for 40 feet wide South-North road to facilitate the Petitioner and other residents of the locality for access. It is also essential to take note that after the allocation of the land to the Respondents-Educational Institution, the premises of the girls' high school, its hostel as well as college premises etc. were constructed in the land Gat No. 843/A. But, the disputed road would cause division of the land in two parts. The building of the girls' high school, hostel are on one side of the road whereas the college premises and the building of the office administration are on other side of the road. At this juncture, we find substance in the contention propounded on behalf of Respondents-Educational Institution that in case the general public is allowed to use the disputed road, it would put the

safety, security and privacy of the girls' school, its hostel etc. at stake. Obviously, if the general public is allowed to have access to the premises of the Educational Institution under the guise of use of the road, it would cause disturbance, inconvenience and hardship to day-to-day affairs of the Educational Institution. Moreover, it would be detrimental to the safety and security of the girls' high school and its hostel and other activities to be carried out within the premises of the Respondents-Educational Institution. In such circumstances, it would be highly impractical to allow the general public including the Petitioner and the residents of the nearby area to utilize the disputed road located in gairan land Gat No. 843/A as a public road.

9. It is to be reiterated that the Respondents-Educational Institution have already made alternate provision and left the sufficient space for 40 feet wide road on the same direction i.e. North-South for egress and ingress to the Petitioner and residents of the nearby locality. It would not cause any inconvenience and injustice to them. The priority is essential to be given to the security and safety of the students studying in the girls' school and inmates of the hostel. In such circumstances, we are not inclined to exercise extraordinary jurisdiction in favour of Petitioner. The impugned order of the Respondent-District Collector appears to be just and reasonable. Therefore, no interference is warranted in it.

10. For the reasons aforestated, we are of the opinion that there is no illegality or infirmity in the impugned order passed by the District Collector, Kolhapur in closing the disputed road. The petition being devoid of merits deserves to be dismissed and is accordingly dismissed. Rule to accordingly stand discharged with parties to bear their respective costs.

[K. K. SONAWANE, J.]

[R. M. SAVANT, J.]