

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Writ Petition No.3714 of 2017

Ashish s/o Shubhashchandra Gupta

vs.

*The State of Maharashtra, through its Principal Secretary, Department of Forest, Mantralaya,
Mumbai and others*

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*Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.*

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Court's or Judge's Orders

*Shri Nitin Lalwani, Advocate for the Petitioner.
Shri K.L. Dharmadhikari, A.G.P. for the Respondent Nos.1 to 3.
Shri G.A. Kunte, Advocate for the Respondent No.4.*

**CORAM : SMT. VASANTI A. NAIK &
ARUN D. UPADHYE, JJ.**

DATE : 24th JANUARY, 2018.

By this writ petition, the petitioner seeks a declaration that the petitioner has right to use the road to approach his building at Plot Nos.88 and 89 in Khasra Nos.149 and 164/3 in Mouza Zingabai Takli without any disturbance or obstruction from the respondent nos.1 and 2. An order restraining the respondent nos.1 to 3 to stop the construction of the compound wall that would result in obstruction to the petitioner in the use of the approach road is also sought.

According to the petitioner, he is the owner of Plot Nos.88 and 89 in Khasra Nos.149 and 164/3 and he is making construction on the same after securing sanction from the Nagpur Improvement Trust. According to the petitioner, the petitioner can approach these plots only through a plot on the eastern side which is a 9 meter road, as earmarked in the map. It is submitted that the respondent nos.1 and 2 are

constructing a compound wall that would result in hindrance and obstruction to the petitioner in the use of the 9 meter road. It is stated that since the 9 meter road is the only road giving access to the plots of the petitioner and the petitioner would not be able to access his plots from any other road, as an easement of necessity, it would be necessary for the respondent nos.1 and 2 to keep the 9 meter road free from any obstruction so that the petitioner could use the same for approaching his plots. The learned Counsel relied on the judgment in the case of *Hero Vinoth (Minor) vs. Seshammal* reported in (2006) 5 SCC 545 and specially paragraph 29 thereof to substantiate his submission.

On the other hand, it is submitted on behalf of the respondent nos.1 and 2 that the land which the petitioner claims to be the 9 meter road is not a 9 meter road in the sanctioned plan. It is submitted that the so called 9 meter road is a plot of land belonging to the forest department of the State Government and the respondent nos.1 and 2 are desirous of constructing a compound wall to protect their property. It is submitted that the entire construction material is lying on the site and there is a likelihood that the same would get wasted, if the injunction as sought by the petitioner is granted. It is stated that since disputed questions of facts are involved in this writ petition, this Court may not entertain the writ petition and the petitioner may be relegated to the civil court or the appropriate forum for the redressal of his grievance.

On hearing the learned Counsel for the parties and on a perusal of the documents annexed to the writ petition and the affidavit-in-reply filed on behalf of the respondent

no.4, it appears that several disputed questions of facts are involved in this writ petition. The question whether the disputed site could be used by the petitioner as a road as an easement of necessity cannot be effectively decided in exercise of the writ jurisdiction. The judgment reported in (2006) 5 SCC 545 and relied on by the learned Counsel for the petitioner cannot be applied to the facts of this case. In the said judgment, the party had approached the civil court by filing a suit and the civil court had found that the disputed site was the only way available to the plaintiff to approach his property. In the instant case it is seriously disputed by the respondents that the disputed site is earmarked as the 9 meter road in the map. A map is produced by the respondent no.4 to point out that the 9 meter road is only till a particular point and after that the property belonging to the respondent nos.1 and 2 i.e. Khasra No.147 is located. On a perusal of the prayers in the writ petition, it is apparent that the petitioner has sought a declaration that the way shown in the map produced by the petitioner is the only way available to the petitioner to approach his plots and an injunction is sought against the respondent nos.1 to 3 not to construct a compound wall on the said property. Such prayers are normally made in a civil suit filed by a plaintiff for declaration and permanent injunction based on the plea of easement of necessity as is claimed by the petitioner in this case. We are not inclined to entertain the writ petition in the circumstances of the case. The petitioner is free to avail an appropriate remedy, if so advised.

Hence, we dismiss the writ petition with no order as to costs.

At the request made by the learned Counsel for the petitioner, the *ad interim* relief granted on 23/06/2017 is continued for two weeks only. Order accordingly.

*sdw

JUDGE

JUDGE