

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2240 OF 2018

SUMANBAI GYANOBARAO PATIL
VERSUS
SHIVAJI MAHADU GAWALE AND OTHERS

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Advocate for Petitioner : Shri Khande Avinash A.
Advocate for Respondent 1 : Shri Gangakhedkar S.S.
Advocate for Respondents 3 to 5 : Shri Munde S.B.
AGP for Respondents 7 to 9 : Shri Yadav (Lonikar) S.R.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: February 11, 2019

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PER COURT :-

1. I have heard the learned Advocates for the appearing parties and have perused the affidavit-in-reply filed by the Naib-Tahsildar, Kinwat, Shri Sarvesh Narayan Meshram. I have considered the submissions of the learned AGP.

2. There is no dispute that the individual respondents had approached under Section 5(2) of the Mamalatdar Courts Act, 1906. Certain orders were passed. The matter was taken in Revision before the Revisional Authority, which has passed orders, prejudicial to the interest of the petitioner. Hence, this petition.

3. The learned AGP points out that though there appears

existence of a pathway between Gut No.132 and 149, now, respondents 1 to 6 have preferred an application under Section 143 of the Maharashtra Land Revenue Code, seeking creation of a new cart way. The said proceedings have been allowed and the petitioner has preferred an Appeal under Section 247 of the Code.

4. It requires no debate that the proceedings under Sections 5 and 23 of the said Act, pertain to clearing of obstacles in an existing path. If these respondents have approached the statutory authorities for creation of a new road, this petition can be disposed off by directing the parties to maintain status quo as existing today, till the decision in the appeal preferred by the present appellant.

5. Learned Advocates for the respective litigating sides pray that a time frame may be granted for the appellate authority in deciding the appeal preferred by the petitioner and all would cooperate in the expeditious hearing of the said appeal. Learned counsel for respondents 3 to 5 submits that the appeal may be reserved for passing the orders.

6. Considering the above, this petition is disposed off by directing the litigating sides to maintain status quo, as existing today, until the decision in the appeal to be delivered by the competent authority. It

is expected that the competent authority would decide the said appeal on its own merits and preferably on/or before 31.3.2019. The impugned orders shall be subject to the result of the proceedings between the parties under the MLR Code, by applying the *Doctrine of Merger*.

(RAVINDRA V. GHUGE, J.)

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