

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.13267 OF 2019

WAHED VAJIR PATEL AND OTHERS
VERSUS
SUBHASH HUKUMCHAND THOLE AND ANOTHER

Mr.S.C.Arora, Advocate for the petitioners.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 05/11/2019

PER COURT :

1. The petitioners/original defendants are aggrieved by the interlocutory order passed by the Trial Court dated 26/02/2019 by which temporary injunction has been clamped upon the petitioners in RCS No.12/2019. The petitioners are further aggrieved by the judgment and order dated 29/07/2019 delivered by the learned District Judge-9, Aurangabad, by which the Misc.Civil Appeal No.53/2019 filed by the petitioners, has been dismissed.

2. The learned Advocate for the petitioners has strenuously criticized the impugned orders. He has referred to each of his 5 grounds formulated in the memo of the petition. He has placed heavy reliance upon a map produced at page No.66 of the petition

paper book. It is submitted that the land of the plaintiffs bearing Gat Nos.41 and 42 are on the Northern side of the petitioners' land in Gat No.56. There is a road passing through the land of the petitioners thereby bisecting the land in between his boundary abutting Gat Nos. 41 and 42.

3. Reliance is then placed upon the sketch at page No.81 of the petition paper book to indicate that the road bisects the land of the petitioners in the East-West direction and beyond the said road, there is still one large patch of land abutting the road on the South side and touching the boundaries of the land of the plaintiffs in Gat Nos. 41 and 42 on the North side. Grievance is that on account of an injunctory order, the petitioners are unable to cultivate that portion of the land, which is in between the borders of Gat Nos. 41 and 42 and the road.

4. The learned Advocate for the petitioners further submits that though the suit is purely for seeking perpetual injunction, as the petitioner had commenced the erection of wire fencing to protect his land from the land of the plaintiffs, they have succeeded in indirectly preventing the petitioners from cultivating the portion of the land between the road and the lands of the plaintiffs. It is therefore

contended that the reliefs, which the plaintiffs would not have obtained directly, have been granted to them indirectly by the injunctory order.

4. The Hon'ble Apex Court has laid down the law in the matters of Syed Yakoob Vs. K.S. Radhakrishnan and others [AIR 1964 SC 447] and Surya Dev Rai Vs. Ram Chander Rai [(2003) 6 SCC 682] that unless an impugned order clearly appears to be perverse, erroneous and likely to cause grave injustice, the High Court should not exercise its supervisory powers.

5. The injunction granted by the Trial Court reads as under :-

"1. Application is allowed.

2. Defendants, their agents, servant, relatives or anybody claiming on their behalf are hereby temporarily restrained from obstructing the possession of plaintiffs over the suit property by any means till disposal of the suit.

3. Costs in cause.

Pronounced in open court."

6. It is therefore obvious that the petitioners have been restrained from obstructing the possession of the lands of the plaintiffs, which have been described as the suit property in the plaint. I, therefore,

do not find that there is any embargo upon the petitioners from entering their own lands by using the same road, which has been used for a long time. The impugned order does not amount to land locking the petitioners. It only prevents the petitioners from obstructing the possession of the plaintiffs over their properties, which admittedly belong to the plaintiffs and the petitioners do not claim that the plaintiffs have encroached on their lands.

7. In view of the above, I do not find that this petition needs to be entertained and the same is therefore dismissed.

(Ravindra V.Ghuge, J.)