

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 10009 of 2019

Smt.Shantabai Dattatraya Patil .. Petitioner

Vs.

The Tahsildar, District Solapur
and others .. Respondents

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Mr. Surel S. Shah for the petitioner.

Mr. V.S. Talkute for respondent no.2.

Ms.Nisha Mehra, AGP for respondent nos.1 to 3.

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CORAM: PRADEEP NANDRAJOG, C.J.
AND BHARATI DANGRE, J.

DATED : 10th DECEMBER, 2019

ORDER:- [Per Smt. Bharati Dangre, J.]

1 The petition revolves around Gat No.37 situate at Khandali, Taluka Malshiras, District Solapur admeasuring 4H, 38 Are. The entire piece and parcel of land described as above was owned by Late Pandurang Gosavi. In the year 1977, land admeasuring 1H, 19Are came to be allotted to Smt.Shantabai D. Patil for cultivation and she was inducted as a tenant. On expiry of the tenancy period, the land holder Pandurang Gosavi sought to resume the land, however by applying the Bombay Tenancy

Tilak

and Agricultural Land Act, the petitioner Smt. Shantabai was declared as an owner since she was cultivating the said land and 1H 19A was thus retained by the petitioner. As far as remaining land of 2H 19R is concerned, it came to be retained by the land holder and he was put in possession of the land on 19th December 2000.

2 Late Pandurang Gosavi obtained a loan from Soumitra Patsanstha, Akulj but was unable to repay the same and the amount to be repaid mounted to Rs.Six lakhs. On account of the fact that carrying out agricultural operation in the piece of land allotted to him was not feasible, Pandurang decided to sell the land to the present petitioner. An agreement to sale was accordingly executed on 23rd June 2009. Since there was a failure on part of Pandurang to execute a sale deed, the petitioner filed Special Civil Suit No.51 of 2011 for specific performance. Pertinent to note that pending the said suit, it is revealed that Pandurang also executed a sale deed in favour of Vijay Parade (Respondent No.2 to the said petition). The suit filed by the petitioner came to be decreed in her favour and the defendants were directed to execute sale deed in her favour in respect of Suit property 1-A in Gat No.37. The petitioner was directed to deposit remaining amount as a consideration and it was directed that she should be handed over possession of the suit property 1-A on execution of the sale deed.

3 Shri Pandurang Gosavi in the year 2003 preferred an application before the Tahsildar seeking right of way to approach vizori – Khandali Road over the boundaries of the land belonging to the defendants including Shantabai i.e. the present petitioner. The Tahsildar Malshiras by his order dated 2nd September 2003 granted right of way over the canal road granting access to 2H 19Are land belonging to Pandurang.

4 The contention of the petitioner is that she was unaware about the said order obtained by Pandurang and it is only when the respondent No.2 to whom the land was alleged to have sold by Pandurang, who sought execution of the order passed under Section 143 of the Maharashtra Land Revenue Code, the petitioner became aware of such an order. She therefore, instituted the Suit bearing Regular Civil Suit No.14 of 2015 seeking a declaration that the order passed by the Tahsildar under Section 143 of the Maharashtra Land Revenue Code is *non est* and the application filed by the respondent No.2 to seek police aid, deserves a dismissal. In application filed by the Respondent No.2 in the said Suit raising preliminary objection to the maintainability of the suit was rejected on 28th December 2015. The trial Court heard the application filed by the petitioner seeking temporary injunction and the same came to be rejected by an order dated 14th June 2017 recording that no prima

facie case has been established and the balance of convenience was in favour of the defendants. The petitioner preferred Civil Miscellaneous Application No.15 of 2017 before the District Court at Malshiras and the same is pending for adjudication. On 11th August 2017, Tahsildar Malshiras on a motion being made by the respondent No.2 has sought police assistance for implementation of the order passed under Section 143 of the Maharashtra Land Revenue Code.

5 The petitioner filed an Appeal before the Sub-Divisional Officer seeking a restraint order which is rejected on 26th June 2018. The ground for rejection being that the order passed on 11th August 2017 is an administrative order and therefore, the remedy under Section 247 of the Maharashtra Land Revenue Code is not available to the petitioner.

6 Against this order, the petitioner preferred RTS Appeal No.798 of 2018 and that was also rejected on 19th July 2019. It is in this background the petitioner has approached this Court and her grievance is that she has a decree in her favour in respect of the suit property 1-A of Gat No.37 and the other portion of Gat No.37 already vests in her by declaration from the competent Court. The submission of the petitioner is therefore that the order granting right of way in favour of Pandurang, the predecessor in title of Respondent No.2 cannot be sustained in

light of the decree being passed in her favour. It is her specific submission that the Respondent No.2 had suppressed from the authorities the decree for specific performance passed in her favour and against the Respondent No.2 and there is no stay to the said decree in any appellate proceedings and this fact being suppressed the authorities have passed the order directing implementation of an order passed by the Tahsildar under Section 143 of Maharashtra Land Revenue Code.

7 Perusal of the chronology of facts disclose that an order came to be passed by the Collector in favour of Pandurang Gosavi on 2nd September 2003 and along with the said order at page no.34, there is a map reflecting the right of way granted by the Tahsildar Malshiras. The said map depict the position of Gat No.37 and right of way which was claimed and granted in favour of Late Pandurang Gosavi. The right of way has been granted over the boundaries of Gat No.37 by having access through vizori Khandala Road. The fact of a decree being passed in favour of the petitioner and against the respondent which is pending in an Appeal before the District Court cannot stall implementation of an order passed by the Tahsildar under Section 143, particularly when the decree in favour of the petitioner has not yet been executed. The decree passed in favour of the petitioner if executed and she being put in possession of the portion of land 1-A in Gut No.37, the right of way would get automatically

extinguished since the petitioner would become owner of the entire Gat No.37. As long as the defendant no.2 is in possession of Gat No.37 – 1A, the order passed by the Tahsildar granting right of way needs an implementation and the petitioner who is creating a glitch in implementing the said order, has rightly being restrained from doing so by the impugned order.

8 We see no merit in the claim of the petitioner and no infirmity in the orders impugned. Resultantly, we dismiss the Writ Petition, upholding the impugned order dated 11th August 2017.

9 No order as to costs.

SMT. BHARATI DANGRE, J

CHIEF JUSTICE