

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 8540 OF 2018**

Gorakhnath Shripati GunawarePetitioner.

Vs.

Motiram Bhairu Gunaware & Ors.Respondents.

Mr. S.S. Prabhune for the Petitioner.

Mmr. V.B. Tapkir for the Respondent No.1.

Mr. P.P. Pujari AGP, for the Respondent No.2-State.

CORAM : A. S. GADKARI, J.

DATE : 2nd AUGUST, 2019.

P.C.:-

The Petitioner, by the present Petition, has taken exception to the Judgment and Order dated 22nd May, 2018 passed by the Sub-Divisional Officer, Daund-Purandar Sub-Division, Daund District Pune, in Revision Application No. 10 of 2017, rejecting the said Revision.

2 Heard Mr. Prabhune, learned counsel for the Petitioner, Mr. Tapkir, learned counsel for the Respondent No.1 and the learned AGP. Perused the record.

3 The record indicates that, the Respondent No.1 had filed an Application bearing No. 03 of 2016 under Section 49 of the Maharashtra Land Revenue Code, (for short, "*the MLR Code*") before

the Tahasildar Daund, Taluka Daund, District Pune, seeking permission to lay pipe-line through the land and along side of the band owned by the Respondent No.1. The length of the said pipe-line, admeasures approximately 120 feet. The Tahasildar Daund, after hearing the parties thereto, has allowed the said Application by its Order dated 17th May, 2017. It is observed in the said Order that, if the Respondent No.1 is permitted to lay pipe-line along side of the band of the Petitioner's land, no prejudice and/or loss would be caused to the Petitioner. The Tahasildar has directed the Respondent No.1 to lay the said pipe-line three feet deep by excavating land and after the said pipe-line is laid down, to make the surface of the land to its original position.

4 The Petitioner, therefore, preferred Revision bearing No. 10 of 2017, before the Sub-Divisional Officer, Daund-Purandar Sub-Division, Daund District Pune against the said Order dated 17th May, 2017, passed by the Tahasildar. The Sub-Divisional Officer, Daund-Purandar Sub-Division, Daund, after re-appreciating the evidence available on record has rejected the said Revision.

 Against the said concurrent findings, the Petitioner has preferred the present Petition.

5 Learned counsel for the Petitioner submitted that, the Respondent No. 1 is not owner of the land, for which he is seeking water for irrigation. He submitted that, as per Section 49 of the MLR Code, it is the owner of the land who is entitled to file such an Application and in the absence of having *locus-standi* of the Respondent No.1, the said Application under Section 49 of the MLR Code, cannot be filed.

6 Perusal of record would indicate that, there is no substance in the contention of learned counsel for the Petitioner. The record clearly reveals that, the Respondent No.1 is cultivating the said land for which he has sought permission under Section 49 of the MLR Code. Apart from the facts as noted earlier, there is concurrent finding recorded by both the Revenue Authorities below.

 The Supreme Court in the case of *Shalini Shyam Shetty & Anr. Vs. Rajendra Shankar Patil*, reported in (2010) 8 SCC 329 has enumerated the principles in the exercise of High Court's jurisdiction under Article 227 of the Constitution of India. It is held that, the High Courts cannot, at the drop of a hat, in exercise of its power under Article 227 of the Constitution, interfere with the Orders of tribunals or courts interior to it. Nor can it, in exercise of this power, act as a

court of appeal over the orders of the court or tribunal subordinate to it. In cases, where an alternative statutory mode of redressal has been provided, that would also operate as a restrain on the exercise of this power by the High Court. That, the High Court can interfere in exercise of its power of superintendence when there has been a patent perversity in the orders of the tribunals and courts subordinate to it or where there has been a gross and manifest failure of justice or the basic principles of natural justice have been flouted.

It is further held that, in exercise of its power of superintendence, the High Court cannot interfere to correct mere errors of law or fact or just because another view than the one taken by the tribunals or courts subordinate to it, is a possible view. In other words, the jurisdiction has to be very sparingly exercised. That, the power of interference under this Article is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and courts subordinate to the High Court.

The afore-stated view expressed in the case of *Shalini S. Shetty (Supra)* has been further affirmed by the larger Bench of the

Supreme Court in the case of *Radhey Shyam & Anr. Vs. Chhabi Nath and Ors. Reported in (2015) 5 SCC 423*.

7 After perusing the entire record made available, this Court is of the considered view that, both the Authorities below have properly evaluated the evidence available on record and have passed the impugned Orders. There is no error and/or irregularity committed by both the Authorities below, while passing the impugned Orders.

 After taking into consideration the entire record, this Court is of the view that, there is no merit in the Petition and is accordingly rejected.

(A.S. GADKARI, J.)