

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION (ST) NO.22954 OF 2019

Smt.Samabai Kashinath Mane & Ors. ... **Petitioners**
Versus
Shri.Baban Ramu Bagane & Ors. **Respondents**

.....

Ms.Prachi Khandge i/b. M. P. Vashi Associates, Advocate for the
Petitioners.

Mr.Kedar J. Patil, Advocate for the Respondent Nos.1 to 12.

....

CORAM : A.M.BADAR J.

DATED : 7th NOVEMBER 2019.

P.C. :

1 This is a petition by plaintiffs challenging rejection of their Miscellaneous Civil Appeal filed under Order XLIII of the Code of Civil Procedure by which the learned Appellate Court has confirmed rejection of application for temporary injunction moved by the petitioners/original plaintiffs before the learned trial Court.

2 Heard the learned Counsel appearing for the petitioners/original plaintiffs at sufficient length of time. She argued that the petitioners/original plaintiffs are owners of field Gat No.248 of village Yogewadi, Tasgaon Taluka of Sangli District.

In submission of the learned Counsel for the petitioners/original plaintiffs, there is no access road from the field Gat No.248 owned by the petitioners/original plaintiffs and even in village map there is no such mention. However, the defendants applied to the Mamlatdar under the provisions of Mamlatdars Courts Act, 1906 and the Tahsildar visited the spot and drew panchanama with a finding that no road passes from the field owned by the petitioners /original plaintiffs. However, still the application came to be allowed by the Tahsildar by directing the petitioners/original plaintiffs not to cause obstruction so far as road is concerned. This, according to the learned Counsel for the petitioners/original plaintiffs gave cause of action to the petitioners/original plaintiffs to approach the Civil Court by filing the suit for declaration as well as perpetual injunction by challenging the Order of the Tahsildar dated 26/06/2018. The learned Counsel for the petitioners/original plaintiffs further argued that the petitioners/original plaintiffs have fulfilled all necessary ingredients for grant of temporary injunction and without acquisition of their land by payment of compensation, no road can be constructed through their land. By drawing my attention to the appellate Order, the learned Counsel for the petitioners/original plaintiffs assailed the findings given by the Appellate Court regarding existence of the way through *bund* of the field Gat No.248. She has further submitted that the petitioners/original plaintiffs are, therefore, entitled for temporary injunction.

3 I have considered the submissions so advanced and also perused the material placed before me.

4 This is a writ petition challenging the Appellate Order whereby discretionary Order passed by the learned trial Court rejecting the application for temporary injunction is confirmed by the Appellate Court. It is well settled that the appeal challenging the discretionary Order of either grant or refusal of temporary injunction is an appeal in principle. Findings recorded by the trial Court in passing such discretionary Order can be assailed only when the discretion is exercised arbitrarily or capriciously (refer *Mohd. Mehtab Khan & Ors. Versus Khushnuma Ibrahim Khan & Ors.*¹) So far as writ jurisdiction of this Court under Articles 226 and 227 of the Constitution of India is concerned, it can be exercised only in limited sphere i.e. illegality, irrationality and procedural impropriety.

5 Let us, now, examine the case in hand in order to examine whether writ jurisdiction of this Court can be exercised for interfering with the concurrent discretionary Orders passed by two Courts below. The petitioners/original plaintiffs claim to be owners of the field Gat No.248. Undisputedly, the Tahsildar in exercise of powers under Section 5 of the Mamlatdars Courts Act, 1906 has passed the Order by directing the petitioners/original plaintiffs not to cause obstruction to the road passing from the

1 (2013) 9 Supreme Court Cases 221.

field Gat No.248. Though it is argued that in the spot panchanama no road is seen to be existing in the field Gat No.248, perusal of the Order passed by the Tahsildar under Mamlatdars Courts Act, 1906 shows that road passes from *bund* of field Gat No.248. This fact is categorically mentioned in the conclusion arrived at by the Tahsildar while exercising the powers under Section 5 of the Mamlatdars Courts Act, 1906. The learned trial Court while rejecting the application for temporary injunction moved by the petitioners/original plaintiffs has given categorical findings in paragraph 15 of the Order that there is no alternative way to the defendants. It is further recorded by the learned trial Court that a way passes from southern *bund* of Gat No.248. If impugned Order passed by the learned Appellate Court is perused, then in paragraph 14 of the impugned Order, the following findings are given :

“14. However, it is pertinent to note that in subsequent part of said panchanama, he specifically contended that it appears that there is access road from Gat No.250 and Gat No.260. Subsequently, it turns towards western side and adjoining to the southern *bunds* of Gat No.248 it runs from Gat No.248. Then said access road turns towards southern side near Gat No.262 and from there runs from Gat No.262 and proceed further. Towards westerns side of said road, there is Gat No.248 and thereafter, towards southern

side adjoining to Gat No.248 there are Gat No.305 and 263. The occupants of said Gat Numbers have accorded their consent for said road. Thus, from the panchanama, it can be gathered that from southern portion of Gat No.248 towards southern side, the access road is, to some extent, runs from Gat No.248. Considering this aspect, the Tahsildar has restrained plaintiffs from causing obstruction from construction of road which is commenced under the Employment Guarantee Scheme only to the extent of that portion of land.”

Ultimately in paragraph 23 of the impugned Appellate Order, the Appellate Court has observed that as per panchanama, from the southern side of Gat No.248, road seems to exist.

6 In this view of the matter, it cannot be said that the discretion in rejecting the application for temporary injunction is exercised either arbitrarily or perversely. No illegality can be found in the impugned Order which does not seem to be perverse or irrational. One of the ingredient which needs to be proved for grant of temporary injunction is causing irreparable loss. In the case in hand it is seen that injury, if any, which may be sustained by the petitioners/original plaintiffs can not be such a nature which cannot be compensated in terms of money. As the Courts below have held that there is no alternative way for defendants, the comparative injury, if any, which the defendants may suffer

would be much more than that of the petitioners/original plaintiffs. The balance of convenience, as such, is also not in favour of the petitioners/original plaintiffs.

7 In the light of foregoing discussion, the petition is devoid of merit and the same is, therefore, dismissed.

(A.M.BADAR, J.)