

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11010 OF 2015

Chandrakant Mahadev Patil ... Petitioner
Vs.
1. State of Maharashtra and Ors. ... Respondents

Mr. Vijay S. Gharat for the petitioner.
Mr. S.H. Kankal, AGP for respondent no.1.
Mr. M.A. Patil for respondent nos. 2 to 4.

CORAM : NITIN W. SAMBRE, J.

DATE : 7th June, 2019.

P.C. :

Heard respective parties.

2 The land Survey No. 72, Hissa No. 7A village Khalsapoli is
claimed to be owned by the petitioner.

3 The respondent-villagers lodged the proceeding under the
Mamalatdars Courts Act, 1906, that there was easementary right to pass
through the land of the petitioner and petitioner obstructed their way by

constructing a staircase. The Mamalatdar passed an order in favour of the respondent, thereby ordered removal of encroachment which was confirmed in Revision by Sub-Divisional Officer. As such, this Writ Petition.

4 The learned Counsel for Petitioner submits that the petitioner is the owner of the property through which road was passing which fact is not in dispute. That being so, he has every right to develop his property. According to him, the construction of staircase is with an intention to have convenient entrance to his own house. According to him, there is another alternate way made available to the respondents through the very land of the petitioner and that being so, both the Authorities below have erred in passing the order impugned. The learned Counsel then would urge that the observations made by the learned Sub Divisional Officer of initiational action u/sec. 32-G of Mamalatdars Courts Act, 1906 is without any authority. As such, he sought indulgence.

5 *Per Contra*, the learned Counsel for respondent would urge that the land in question was acquired, was back in 1950 and already earmarked to the village panchayat for extension of Gavthan. According to

him, in the aforesaid background the petitioner has no authority in law to obstruct the right of way of villagers.

6 Having considered the rival submissions what is required to be noted is existence of road for the villagers i.e. respondents herein is not a fact in dispute. The claim of the petitioner is, he being owner of the property, has every right to develop the same so as to conveniently enjoy it. The fact remains that the obstruction is created by the petitioner by virtue of construction of staircase which was earlier not in existence. The finding of fact to that effect is recorded by the Tahasildar and confirmed by the Sub Divisional Officer in the Revision.

7 Apart from above, the alleged alternate road which is claimed to be made available by the petitioner for the villagers is concerned, the Mamalatdar and Sub-Divisional Officer in the proceeding in question have appreciated the same and found it to be not fit for use during rainy season.

8 In the aforesaid background and finding of facts recorded by both the authorities, wherein it is concurrently held against the petitioner,

based on the pleadings and documentary evidence that the petitioner has caused encroachment on the public way.

9 That being so, no case is made out. The petition fails and the same is dismissed.

10 However, the right of the petitioner to contest 32-G proceedings as ordered by Sub-Divisional Officer is kept intact.

(N. W. SAMBRE, J.)