

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 736/2019

Keshav Vithoba Khatdeo & ors.

..VS..

State of Maharashtra & ors.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Ms. S.W. Deshpande, Advocate for the petitioner(s)
Shri V.P. Maldure, AGP for the respondent nos. 1 and 2

CORAM : Z.A.HAQ, J.

DATED : 04/02/2019

Heard.

The petitioners had filed civil suit praying for decree for injunction restraining the present respondent nos. 3 to 13 from using the way over Dhura of Survey No. 28 which belongs to the present petitioners. The litigation had come to this Court in S.A. No. 426/1999 which was decided by the judgment dated 03/03/2014, operative part being as follows:-

“(i) *Second Appeal No. 426/1999 is allowed.*

(ii) *The impugned judgment and decree passed by both the Courts below are set aside.*

(iii) *Regular Civil Suit No. 31/1993 filed by the appellants is decreed and it is declared that the defendants do not have any right to pass through or use South-East Dhura of field Survey No. 28 for*

approaching their field as their way save and except any enquiry and decision into any claim by competent authorities.

(iv) The defendants are restrained from using/utilizing the said South-East Dhura of Survey No. 28 by decree of permanent injunction save and except any decision by a competent authority.

Decree be drawn up accordingly.

No order as to costs.”

As per the liberty granted by this Court, the respondents approached the Tahsildar under Section 143 of the Maharashtra Land Revenue Code, praying that the approach way be carved out to enable them to reach their agricultural lands. By the order dated 30/06/2015, the Tahsildar granted access way to the respondent nos. 3 to 13 over Dhura of Survey No. 28/2 and Survey No. 29. This order passed by the Tahsildar is challenged by the petitioners before the Civil Court. In the civil suit, the petitioners filed application (Exh. 5) praying for temporary injunction restraining the present respondent nos. 3 to 13 (defendants in the civil suit) from using the approach way as granted by the Tahsildar. The trial Court rejected the application (Exh. 5) by the order dated 07/02/2017. The petitioners approached the District Court by filing appeal which is dismissed by the impugned judgment.

The contention on behalf of the petitioners is that the impugned order and the judgment are passed by the subordinate Courts overlooking the judgment given by this Court in S.A. No. 426/1999. It is further submitted that the

respondent nos. 3 to 13 have not prayed for the way as of necessity and they have alternate way and in these facts, it cannot be said that they will be put to any irreparable loss or injury if temporary injunction as prayed for by the petitioners – plaintiffs is granted.

After examining the matter and going through the impugned order and judgment passed by the subordinate Courts, I find that both the Courts have properly dealt with the relevant material/evidence. I am restraining myself from examining the merits of the matter as it may prejudice the adjudication before the trial Court. Suffice to say that the Competent Authority/Tahsildar has exercised the powers conferred by Section 143 of the Maharashtra Land Revenue Code and has directed carving out of the approach way to the fields of the respondent nos. 3 to 13, and till the order of the Tahsildar is set aside, it would not be appropriate to grant temporary injunction. Even otherwise, the approach way is granted over Dhura of the field owned by the petitioners – plaintiffs, and the learned District Judge has examined this aspect while considering the point of balance of convenience and irreparable loss and hardship, in para no. 9 of the judgment.

It cannot be said that the subordinate Courts have committed any illegality or error of jurisdiction which necessitates interference by this Court in the extra-ordinary jurisdiction.

The writ petition is **dismissed**. No costs.

Considering the nature of controversy and the fact that the parties are litigating since more than 2 decades, the trial Court is directed to dispose the civil suit till 30/11/2019.

JUDGE

Ansari