

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

WRIT PETITION NO. 3517 OF 2019

Sachin S/o Tryambakrao Kurhadkar

..VS..

Khateshwar S/o Narayanrao Ingole and ors.

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

Court's or Judge's orders

Shri Piyush s. Kadai, Adv. for the petitioner
Shri R.D. Dhande, Adv. for respondent Nos. 1 and 2
Shri V.G. Palshikar, Adv. for respondent No.3.

CORAM : Z.A.HAQ, J.

DATED : 18/07/2019

Heard.

The concurring judgment passed by the learned District Judge dismissing the appeal filed by the petitioner under Order 43 Rule 1(r) of the Code of Civil Procedure, maintaining the order passed by the trial Court under Order 39 Rule 1 and 2 of the Code of Civil Procedure, is challenged by the original defendant/petitioner in this writ petition.

The trial Court granted injunction in favour of the plaintiff and directed the defendant No. 1 to remove obstruction in the approach way of plaintiff.

The petitioner has also challenged the order passed by the Naib Tahsildar on 20/01/2001 by which the Naib Tahsildar had accepted the claim of the respondent Nos. 1 and 2 in respect of approach way.

The contention of the petitioner is that the order dated 20.01.2001 is illegal and unsustainable, as Naib Tahsildar had no authority/power to decide the application filed by the respondent Nos. 1 and 2. The delay in challenging the order dated 20.01.2001 is explained by the petitioner stating that he has purchased the field in 2011.

In the plaint filed by the respondent Nos. 1 and 2 before the trial Court, it is stated that the approach way in respect of which the Naib-Tahsildar had upheld the claim of the respondent Nos. 1 and 2 by the order dated 20.01.2001 was used by them till 2018 when the petitioner (defendant No. 1) created the obstruction. Before the petitioner purchased the field in the year 2011, his predecessor, accepted the order passed by the Naib Tahsildar on 20.01.2001 and then since 2011 till 2018 the petitioner had also not raised any challenge to the order dated 20.01.2001.

In these facts, the challenge as raised by the petitioner to the order dated 20.01.2001 after 18 years cannot be entertained.

As far as the challenge to the order passed by the civil Court granting injunction in favour of the respondent Nos. 1 and 2, and challenge to the judgment given by the learned District Judge, I find that all the relevant aspects are properly examined. The conclusions of the sub-ordinate Courts are based on proper appreciation of material on record.

The petitioner has not been able to point out any illegality or perversity and it cannot be said that there is any

error of jurisdiction which necessitates the interference by this Court in the extra ordinary jurisdiction. Hence, the writ petition is **dismissed** with costs quantified at Rs.5000/- to be paid by the petitioner to the respondent Nos. 1 and 2. The receipt showing the payment of costs shall be produced by the petitioner before the trial Court within one month, failing which the trial Court shall pass appropriate orders against the petitioner (defendant No. 1) treating it as non-compliance of the directions given by this Court.

JUDGE

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