

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

Writ Petition No.4353 of 2016

Panurang Bhoyar and Ors. Vs. State Government Maharashtra and others

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

Court's or Judge's orders

Mr. P.J. Mehta, Advocate for petitioners
Mrs. Mrunal Naik, AGP for respondents No.1 to 4.
Mr. Rohit Joshi, Advocate for respondents No.5 to 7.

CORAM : MANISH PITALE, J.

DATED : NOVEMBER 08, 2019

The petitioners who are the original plaintiffs filed the present writ petition challenging concurrent orders passed by the two Courts below, rejecting the prayer of temporary injunction made on behalf of the petitioners in the suit filed by them before the Court of Civil Judge (Senior Division), Chandrapur.

2. The petitioners claimed that they are owners of agricultural fields bearing Nos.32 and 14/1 at village Shivni Chor Post Nandgaon Tah. & Dist. Chandrapur. It is claimed that they were using the way between the field survey Nos.33 and 14/2 to access their field survey Nos. 32 and 14/1. It was claimed that the respondents No. 5 to 7 illegally obstructed the said way by erecting fence, due to which initially they had approached the Tahsilar, Chandrapur. It is pointed out the Tahsildar held in

favour of the petitioners regarding existence of such way from the fields of the respondents No.5 to 7, which was confirmed by the Sub-Divisional Officer, but, in appeal filed by the said respondents, the Collector set aside the orders of the Tahsildar and Sub-Divisional Officer and admittedly, Additional Commissioner confirmed the order of the Collector. It was at this stage that the petitioner filed R.C.S. No.146/2014 for permanent injunction wherein the aforesaid application for grant of temporary injunction was filed. By order dated 27/10/2015, passed below Exh.5, the Trial Court dismissed the application filed by the petitioners. The District Court, Chandrapur dismissed the Miscellaneous Civil Appeal No.69/2015, filed by the petitioners challenging order of the Trial Court, as a result of which the dismissal of application for temporary injunction stood confirmed.

3. Aggrieved by the same, the petitioners filed the present writ petition, in which the contesting respondents No.5 to 7 appeared on caveat. The respondents No.1 to 4 are represented by learned AGP.

4. The learned counsel for the petitioners submitted that the original fact finding authority i.e. Tahsildar had found that the fact that the only way available to the petitioners was between field survey Nos.32 and 14/2 to access their field and that it was noted by the Tahsildar that in all other directions of the

field belonging to the petitioners there were water channels. It was submitted that the said finding was not taken into consideration by the two Courts below while dismissing the application for temporary injunction. The learned counsel invited attention of this Court to the map on record to claim that the only way of access to the fields of the petitioners was the way claimed by them before the Courts below. It was submitted that the material on record was not appreciated in the correct perspective while holding against the petitioners.

5. It is submitted on behalf of the respondents No.5 to 7 that the findings rendered by the Tahsildar were of no consequence because admittedly the same were set aside by the Collector on the challenge raised by the respondent. It was further pointed out that the Courts below took into consideration the fact that despite the claim made by the petitioners that they had been using the aforesaid way to access their agricultural fields and that they were obstructed from doing so from the year 2009, the petitioners were admittedly continuously cultivating their agricultural fields, thereby showing that they had access to the same.

6. It was pointed out that the Collector as well as Additional Commissioner took note of the fact that the petitioner had access to their fields from the

northern portion and that such way was existing between the fields survey Nos.31 and 33. It was submitted that the Courts below also took into consideration the aforesaid material to come to a conclusion that a *prima facie* case for temporary injunction was not made out by the petitioners.

7. A perusal of the material on record shows that while the petitioners claimed that they had been obstructed from accessing their fields in the year 2011, they have been cultivating the suit field located in the fields survey Nos.32 and 14/1. Along with the reply filed on behalf of the contesting respondents No.5 to 7, photographs have been placed on record to show that the fields belonging to the petitioners are indeed being cultivated and further in support of the said assertion the 7/12 extracts show that crops are indeed being taken in the suit fields belonging to the petitioners.

8. Although, the findings given by the Collector and Additional Commissioner, would not be binding on the Civil Court, at the stage of deciding the question as to whether the temporary injunction could be granted in favour of the petitioners, such findings could be looked into, along with other relevant material on record.

9. The map to which the learned counsel for the respondents No.5 to 7 invited attention of this

Court, on the northern side, between fields survey Nos.31 and 33, there is a way through which the petitioners have access to their fields at survey Nos.32 and 14/1. This aspect has been taken into consideration by the two Courts below to hold that the petitioners have failed to demonstrate that despite the alleged obstruction created by respondent Nos. 5 to 7 to the way between field survey Nos.33 and 14/2, claimed by the petitioners, how were they able to cultivate their agricultural fields.

10. In order to give a *prima facie* finding, the material on record was properly taken into consideration by the two Courts below and it cannot be said that any error has been committed by the Trial Courts, warranting interference by this Court in the present writ petition. As there is no substance in the present writ petition, it is dismissed.

JUDGE