

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

WRIT PETITION NO. 5821/2019

Devisingh L. Uparade

..VS..

State & ors.

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

Court's or Judge's orders

Shri V.N. Patre, Advocate for the petitioner
Ms. M. Deshmukh, AGP for the respondent/State

CORAM : Z.A.HAQ, J.
DATED : 21/08/2019

Heard.

By the order dated 17/07/2018, the Naib Tahsildar exercised the jurisdiction under Section 143 of the Maharashtra Land Revenue Code, 1966 (for short "the Act of 1966") and restrained the present petitioner from obstructing the approach way to Gat No. 99/2/1 till measurement of Gat No. 102 is carried out. The order dated 17/07/2018 records that such directions were issued as the crops were standing in the field of the respondent nos. 3 to 5.

According to the petitioner, measurement of Gat No. 102 is not carried out. It is submitted that owner of Gat No. 102 was not party to the proceedings before the Naib Tahsildar, and therefore, measurement of Gat No. 102 is not carried out.

Be that as it may, after the Naib Tahsildar passed the order dated 17/07/2018, the petitioner rushed to the

Civil Court and filed civil suit praying for decree for setting aside the order passed by the Naib Tahsildar on 17/07/2018, and for declaration that the respondent nos. 3 to 5 have approach way through Gat No. 102. The petitioner has also prayed for injunction restraining the respondent nos. 3 to 5 from using the approach way granted by the Naib Tahsildar by the order dated 17/07/2018.

According to the petitioner, the civil suit is filed as per Section 143 (4) of the Act of 1966. In the civil suit, the petitioner had filed an application under Order 39 Rules 1 and 2 of the Code of Civil Procedure seeking temporary injunction restraining the respondent nos. 3 to 5 from using the approach way through the petitioner's field i.e. Gat No. 104.

By the order dated 20/06/2019, the trial Court allowed the application (Exh. 5) filed by the petitioner. This order was challenged by the respondent nos. 3 to 5 before the District Court in appeal under Order 43 Rule 1 (r) of the Code of Civil Procedure which is allowed by the impugned judgment.

After going through the documents placed on record, the impugned order and judgment and considering the facts of the case, I find that the learned District Judge has properly appreciated the relevant facts and has rightly allowed the appeal and consequently rejected the claim of the petitioner for temporary injunction examining the rival contentions in the light of established principles relevant while examining the rival claims for grant / refusal of temporary injunction. Apart from this, I find that the order

dated 17/07/2018 was passed as an interim arrangement. The petitioner ought to have taken appropriate steps before appropriate authority and should have pointed out the grievance, if any.

In the facts of the case, I see no reason to interfere with the impugned judgment passed by the learned District Judge.

Hence, the writ petition is **dismissed**. No costs.

JUDGE

Ansari