

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

WRIT PETITION NO.8280 OF 2018

Tryambak Vithoba Bhoyar and ors.

-vs-

State of Maharashtra, Thr. Collector, Yavatmal and ors.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri S. S. Dhengale, Advocate for petitioner.

Shri Amit Balpande, Assistant Government Pleader for
respondent Nos.1 and 2.

Shri A. S. Dhore, Advocate for respondent No.3.

CORAM : A.S.CHANDURKAR, J.

DATE : June 14, 2019

Interlocutory orders passed on the application for temporary injunction in the suit filed by the petitioners are under challenge.

Initially the respondent No.3 had filed an application under Section 143 of the Maharashtra Land Revenue Code, 1966 seeking right of way before the Naib Tahsildar. That application was allowed on 25/01/2018 in favour of the respondent No.3. The petitioners chose to challenge that order by filing a civil suit. The petitioners sought an order of temporary injunction so as to restrain the said respondent from using the way as granted. The trial Court after taking a prima facie view of the matter along with the fact that there were bullock-cart wheel marks found over field Survey No.49 and 50 coupled with the fact that an alternate way

was not shown, refused to grant any temporary injunction. The appellate Court has confirmed the said order by dismissing the miscellaneous appeal filed by the petitioners.

2. Heard the learned counsel for the parties and perused the documents on record. Though the learned counsel for the petitioners sought to urge that an alternate way was available to the respondent for approaching his field and also sought to rely upon certain affidavits placed on record for the first time before this Court, it is found that both the Courts have prima facie considered the material on record in the form of an inspection report that has been referred to in the order dated 25/01/2018. In that order while granting relief to the respondent No.3 it has been directed that no damage should be caused to the crops standing in the field of the petitioners. The affidavits filed in this Court for the first time do not deserve consideration as they were not placed before the Courts below. The view taken by the Courts is a possible and plausible view.

3. By clarifying that the observations made by the trial Court as well as by the appellate Court are of a prima facie nature and by directing the trial Court to expedite adjudication of R.C.S.

No.09/2018, I am not inclined to interfere in writ jurisdiction. The respondent No.3 shall continue to abide by the directions issued in the order dated 25/01/2018 and take care that no damage is caused to the crops standing in the field of the petitioners.

Writ Petition is accordingly disposed of. No costs.

JUDGE