

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 9787 OF 2019**

Mr. Jaywant Pandurang Hudge & Ors. Petitioners.

V/s

Mr. Bhimrao Narayan Gorad & Ors. Respondents.

Mr. Shahaji T. Waghmode for the Petitioner.

Mr. Rajaram V. Bansode for Respondent Nos. 1 to 15.

Mrs. M.S. Bane, AGP for Respondent Nos. 16 and 17.

CORAM: NITIN W. SAMBRE, J.

DATE: FEBRUARY 22, 2021

P.C.:-

1] This Petition is by the original Plaintiffs in RCS No.284 of 2018 questioning the order of learned District Judge whereby injunction ordered on 5/5/2018 came to be set aside.

2] Submissions of the learned Counsel for the Petitioners are, order of Tahasildar passed in exercise of powers under Section 5 of the Mamlatdars Courts Act is without jurisdiction. According to him, spot inspection report has not supported case of the Respondents and that being so, Tahasildar ought not to have passed the order adverse to the interest of the Petitioners on 26/3/2018. The learned Counsel then

would urge that contrary to evidence on record, lower appellate court re-appreciated the entire gamut of the matter and vacated injunction granted by the learned Trial Court and that being so, the Court should show indulgence thereby continuing the injunction. It is also claimed that if injunction is not granted and Respondents are permitted to use the road, same shall result into division of the field of the Petitioners in two parts.

3] Mr. Bansode, learned Counsel for the Respondent Nos. 1 to 15 would support the order impugned. According to him, after spot inspection, Tahasildar has passed a detail order considering boundaries. According to him, it is the Petitioners who have agreed to give report which is formed to be the basis for grant of right of way and that being so order passed by the lower appellate court is very much justified.

4] Considered rival submissions.

5] The Court of Civil Judge, Junior Division vide Order dated 5/5/2018 restrained the Respondents at the behest of the Petitioners/

Plaintiffs from creating any right of way.

6] Fact remains that prior to the said order of grant of injunction, Tahasildar, Malshiras in exercise of powers under Section 5 of the Mamlatdars Courts Act has already granted right of way. While doing so, Tahasildar has taken into account the spot inspection report, location of respective lands of the parties to the Petition and arrived at a conclusion that in case if road is not granted, Respondents will be left without any access.

7] As far as the order of Trial Court is concerned, Trial Court has mostly relied on incorrect procedure followed by Tahasildar in the matter of order under Section 5 of the Mamlatdars Courts Act, whereas the lower appellate court while vacating the injunction has considered entire factual matrix, including that of location of the property of the Petitioners and Respondents and thereby pleased to vacate the injunction order. The reasons given by the lower appellate court in support of the order of vacating injunction appear to be in tune with the evidence available on record. Revenue entries and the spot inspection report appear to have prevailed before the learned

lower appellate court to vacate the order of injunction.

8] In that view of the matter, no case for interference is made out.
Petition fails and same stands dismissed.

(NITIN W. SAMBRE, J.)