

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5346/2021

Smita Prakash Survase & Ors. Petitioners

Vs.

State of Maharashtra & Ors. Respondents

Mr. R. M. Haridas I/b. P. P. Kulkarni for the Petitioners
Mr. V. S. Gokhale, "B" Panel Counsel for the State

**CORAM: K.K.TATED &
PRITHVIRAJ K. CHAVAN, JJ.**

DATED : SEPTEMBER 8, 2021

P.C.

1 Heard. By this petition under Article 226 of the Constitution of India, the Petitioner is seeking direction against Respondent No.1 - Sub Divisional Officer, Mangalwedha, Dist. Solapur to finally hear and dispose of the Revision Application and stay application filed by the Petitioner, as early as possible within a time frame.

2 The learned counsel for the Petitioner submits that they filed the Revision Application on 17.08.2021 along with Application for stay. He submits that as the Sub Divisional Officer has failed and neglected to decide their Application they have filed Writ Petition No.4671/2021 before this court for the following reliefs:

“(a) This Hon'ble Court be pleased to issue writ, and/or any other Writ, order or direction and thereby be pleased to direct the Respondent No.1 i.e. Hon'ble Sub Divisional Officer, Mangalwedha, dist. Solapur to finally hear and dispose of the Revision Application and the Stay application filed by the Petitioners as expeditiously as possible but within such time frame as this Hon'ble Court deems fit and reasonable.

(b) Pending hearing and disposal of the present Writ Petition stay the execution, implementation and the operation of the order dated 02.08.2021 passed by the Ld. Tahasildar, Mangalwedha, Dist. Solapur

(c) Exparte ad-interim reliefs in terms of prayer(b).

(d)”

3 The learned counsel for the Petitioner submits that this court, by order dated 26.08.2021 directing the Sub Divisional Officer to take up the Petitioner's said application immediately and decide the same within one week from 27.08.2021. He submits that in spite of said order, the application is not decided by the Sub Divisional Officer. Hence, the present Writ Petition.

4 The learned counsel for the Petitioner submits that there is urgency in the matter because the Respondents are trying to start the road work from Gut No.81 at Mauje Paut, Tq. Mangalwedha, Dist. Solapur. He submits that the Petitioner has already filed Regular Civil Suit No.81/2021 before the Civil Judge, Junior Division, Mangalwedha for an order of injunction restraining the Defendants in that matter from constructing any road from Gut No.81. He submits that in that matter, they made an application below

Exhibit-5 for an injunction. He submits that the Trial Court, by order dated 29.05.2021 had directed the parties to maintain status-quo. Operative part of the said order reads thus:

“1. Both parties are directed to maintain the status-quo in respect of suit band till filing of say / written statement by the Defendants.

2. Issue show cause notice as to why the interim relief as prayed for by the Plaintiff should not be granted, returnable on 09.06.2021.

3 The Plaintiffs are directed to comply the provisions of Order 39 Rule 3 of C.P.C.

4. Special belief is granted.”

5 The learned counsel for the Petitioner submits that though these facts were pointed out to the Sub Divisional Officer, he has failed and neglected to decide their Interim Application immediately. He submits that in the interest of justice, this Hon’ble Court be pleased to direct the Sub Divisional Officer to decide the application for stay as early as possible but in any case within time frame.

6 Considering the submissions made by the learned counsel for the Petitioner and order dated 26.08.2021 passed in the Writ Petition No.4671/2021 and order dated 29.05.2021 passed by the Trial Court in Regular Civil Suit No.81/2021, we are satisfied that the Petitioner has made out a case for directing the Sub Divisional Officer to decide the Petitioner’s stay application and Revision Application, as early as possible.

7 Hence, following order is passed:

a. The Sub Divisional Officer, Mangalwedha, Dist. Solaur is directed to decide the Petitioner's application in Revision Application under section 23(2) of the Mamlatdar Court Act 1906 filed on 17.08.2021, as early as possible but in any case, on or before 21.09.2021, after hearing all the parties.

b. Liberty granted to the Petitioner to serve a copy of this order on the Sub Divisional Officer, immediately.

c. With these directions, the Writ Petition stands disposed of.

d. All contentions of the parties are kept open.

e. No order as to costs.

(PRITHVIRAJ K. CHAVAN, J.)

(K.K.TATED, J.)