

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 11327 OF 2019**

Sitaram Krushna Mane Petitioner.
V/s
Babaso Yashwant Bandgar & Ors. Respondents.

Mr. Rahul R. Patil for the Petitioner.
Mr. Sukumar R. Ghanavat for Respondent Nos. 1 to 3.

CORAM: NITIN W. SAMBRE, J.

DATE: FEBRUARY 22, 2021

P.C.:-

1] RCS No.32 of 2019 is initiated by the Petitioner/Plaintiff, thereby claiming relief of perpetual injunction as well a declaration that Respondents have no right of way from the boundary of agricultural land bearing Gat No.418 situated within the jurisdiction of Trial Court till the land of the Respondents. In the said suit, Trial Court refused temporary injunction as prayed which order was confirmed in Misc. Civil Appeal No.93 of 2019. As such, this Petition questioning both these orders, seeking temporary injunction, restraining the Respondents from using the road which is adjacent to the land of the Petitioner i.e. Gat No.418.

2] Submissions of the learned Counsel for the Petitioners are, order impugned has failed to recognize right of party under Section 143 of the Maharashtra Land Revenue Code on establishing necessity of right of way. According to him, granting of right of way by Tahasildar has been relied on by both the Courts below for refusing injunction, which has caused prejudice to the Petitioner. He would rely on extract of the map so as to demonstrate that there exists alternative way passing through the land Gat Nos. 421, 420, 419, 416, 400 and 401. The aforesaid contentions are disputed by the learned Counsel for the Respondents, as according to him, Petitioner has already given concession before Tahasildar as is reflected in the statement of the Petitioner.

3] I have considered rival submissions.

4] As far as reliance placed by the learned Counsel for the Petitioner on the map is concerned so as to demonstrate that there exists alternative way, neither before both the Courts below nor before Tahasildar the said fact could be established. Even with the assistance of learned Counsel for the Petitioner, I have perused the map

produced at Exhibit-E at page 35 to the Petition. However, but for passing dotted line, there is no mention of existence of alternative road for Respondents/Defendants. Apart from above, Court cannot be oblivious to the statement made by the Petitioner before Tahasildar in proceedings under Section 143 of the Maharashtra Land Revenue Code, thereby agreeing to give right of way.

5] In the aforesaid backdrop, orders impugned cannot be faulted with. Petition fails and same stands dismissed.

(NITIN W. SAMBRE, J.)