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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6455 OF 2019

Shri. Kumar Bhau Patil and anotherPetitioners

V/s.

The State of MaharashtraRespondents
Through the Collector, Sangli
and others

Mr. Prajakt M. Arjunwadkar for the Petitioner
Smt. V. S. Nimbalkar AGP for Respondent nos. 1 to 3
Mr. Aniruddha A. Garge for Respondent nos. 5 to 7

CORAM : NITIN W. SAMBRE, J.

DATE: FEBRUARY 26, 2021.

P.C.:

1] Heard. Petitioner initiated R.C.S. No. 28 of 2017 seeking injunction restraining the Respondent from carrying out construction as is shown in the suit map in Gat No. 1129.

2] Learned counsel for the Petitioner-Plaintiff would invite my attention to right of the Petitioner to cultivate the land in question.

According to him the cart-way passing from the side of the land of the Petitioner is claimed to be having width of 15 ft. or 30 ft. or 33 ft. and same is sought to be developed by the Respondent authorities for the public purpose. According to him under the provisions of Maharashtra Land Revenue Code, revenue authorities, particularly the Collector has to look into the issue as to (a) whether there exist a public road and if yes (b) the size of the road and (c) if the area of the road to be developed exceeds, whether said area is acquired for the purpose of development by paying appropriate compensation. According to the learned counsel, the authorities i.e. Zilla Parishad through its Chief Executive Officer, thereby exceeding their powers under the provisions of Zilla Parishad Act, have on their own reached to a conclusion of existence of a road and started development activities which has prompted him to seek temporary injunction in the aforesaid suit which prayers were rejected by the the Trial Court on 15th October 2018 and confirmed by the learned District Judge in appeal on 22nd march 2019. As such this Petition.

3] Apart from the aforesaid factual matrix, his contentions are,

even if the the adjoining land owners whose land is used for the development activity have not raised any objection, same will not bind the Petitioner thereby permitting the use of agricultural land for the purpose of development.

4] In the aforesaid background, Learned counsel submits that revenue authorities are required to be restrained from carrying out any development activity as has been prayed by way of prayer for temporary injunction.

5] Counsel for the Respondent would urge that the plaintiff's nephew has preferred PIL no. 15/2018 which is pending adjudication. Division bench of this court on 13th June 2018 has rejected the grant of Ad-interim relief. According to him, pendency of the said PIL should have been brought to the notice of both the courts below so also this court which fact is suppressed. According to him, infrastructure project is ongoing and in view of provisions of section 20A of the Specific Relief Act, no injunction can be granted qua infrastructure project and that being so, courts below are

justified in rejecting the prayers for grant of intention.

6] I have considered the rival submissions.

7] As far as the implementation of the road project is concerned, it is apparent that there exist cart-way which passes from the side of the land of the Petitioner and the only issue which is required to be considered is whether the size of the said cart-way, while implementing the project in question.

8] In the aforesaid background, even if for the sake of argument the submissions of the Learned counsel for the Petitioner is accepted that his land is encroached upon, Petitioner has every right to approach the competent authority for award of compensation.

9] Petitioner has failed to prima-facie demonstrate that the cart-way was of a particular size/area, the Respondent development authority has exceeded the said cart-way thereby encroaching on the

land of the Petitioner and has caused damage.

10] In that view of the matter and in view of the fact that provisions of section 20A of the Specific Relief Act puts an embargo on the right of a party to claim injunction in the matter of implementation of infrastructure project, concurrent findings recorded, order impugned does not call for any interference.

11] In view of above, petition fails, stands dismissed.

12] However dismissal of the petition shall not come in the way of the Petitioner to get the area of the land/alleged cart-way passing from the side by his field measured and from establishing the fact that Respondent authorities have encroached on his land by seeking appointment of court commissioner, at an appropriate stage. It is also open for the Petitioner to move before the trial court with prayer of award of compensation in case any encroachment by the respondent authorities is noticed.

13] If any such prayers are moved, court below shall consider the same in accordance with law.

[NITIN W. SAMBRE, J.]