

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.4791 OF 2021

**BHAUSAHEB MARUTI SATAV AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

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Advocate for Petitioners : Mr. Narayan S. Pawar
AGP for Respondents – State : Mr. S. N. Kendre
Advocate for Respondent Nos. 2 to 5 : Mr. Vinod Jadhav h/f
Mr. A. V. Hon

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 30th AUGUST, 2022

PER COURT :

1. The petitioners have challenged the order dated 29/02/2020, passed by learned Civil Judge, Senior Division, Shrigonda, District Ahmednagar, below Exhibit-5 in Regular Civil Suit No.141/2018, thereby rejecting injunction in favour of the petitioners. The said order is confirmed by the learned District Judge-1, Shrigonda, in Misc. Civil Appeal No.11/2020.

2. Proceedings under Section 143 of the Maharashtra Land Revenue Code, 1966, was filed by respondent Nos. 2 to 8, claiming right of way from the boundary/*bandh* of Gut No.140 and Gut No.141. The same was allowed by the Tahsildar, Shrigonda. Order passed by the Tahsildar was challenged by petitioners, by filing appeal before Sub Divisional Officer, Shrigonda, which is dismissed.

3. The petitioners, thereafter, filed Regular Civil Suit No.141/2018, seeking declaration of permanent injunction against respondent Nos. 2 to 8. In the suit, application Exhibit-5 is filed for temporary injunction. Respondent Nos. 2 to 8 resisted the said application by filing written statement and say. Trial Court has rejected the application and the said rejection order is confirmed by the District Court, Shrigonda. Hence, the present petition.

4. Heard learned advocate for petitioners, learned advocate for respondent Nos. 2 to 5 and learned Assistant Government Pleader for respondents – State.

5. It is a matter of record that the Tahsildar has passed order under Section 143 in favour of respondent Nos. 2 to 8, thereby directing the petitioners to give right of way from boundary /*bandh* of Gut No.140 and Gut No.141. The said order is confirmed in appeal by the Sub Divisional Officer. Petitioners, in the suit filed by them, have not disclosed the fact of challenging the order passed by Tahsildar in appeal before the Sub Divisional Officer and dismissal of the said appeal.

6. It is, therefore, clear from record that petitioners have elected remedy of filing appeal before Sub Divisional Officer, thereby challenging order passed by Tahsildar, and without

disclosing the same have approached to Civil Court. Thus, petitioners have not come before Civil Court with clean hands.

7. From site inspection and hand sketch prepared by Tahsildar, it is obvious that neither cow-shed nor houses of petitioners are constructed on *bandh* of land Gut Nos. 140 and 141 and they are at a distance towards West side of the said *Bandh*. So as to approach land Gut No.139, respondents are held entitled to use North-South boundary of Gut Nos. 140 and 141. It is nowhere directed to demolish houses and cow-shed of petitioners. The way, therefore, granted to respondents from common *bandh* of Gut Nos. 140 and 141 does not disturb construction of houses and cow-shed of petitioners. It is further clear from order of Tahsildar that while granting way to respondents from common *bandh*, demolition of petitioners' houses and cow-shed is not directed. Therefore, apprehension of petitioners that their houses and cow-shed will be demolished, cannot be said to be well founded. Civil suit filed by petitioners is after one year of decision of Tahsildar, which *prima facie* appears to be beyond limitation. No delay condonation application is filed by petitioners. In this view of the matter and taking into consideration the fact that petitioners have failed to make out any *prima facie* case, balance of convenience is not in their favour and no irreparable loss is likely to be caused to

petitioners if injunction is not granted in their favour, both the Courts have rightly held against petitioners. Both the Courts below have recorded concurrent findings of fact on the basis of record placed before them.

8. No illegality or perversity is found in the orders impugned in present petition. Writ petition, being devoid of merits, is dismissed.

9. At this stage, learned advanced for petitioners seeks six weeks stay to this order. This order shall remain stayed for a period of six weeks from the date of uploading of the order.

(NITIN B. SURYAWANSHI, J.)