

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

WRIT PETITION NO.5147 OF 2022

M/s Rajendra Trading Company & Ors.

... Petitioners

Versus

Agriculture Produce Marketing Committee & Ors.

... Respondents

...

Mr. Ajit B. Gaikwad (Patil), Advocate for the Petitioners

Mr. S. S. Thombre, Advocate for Respondent Nos.1 to 3

...

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 16th September, 2022

PER COURT :-

1. This petition impugns the order dated 13-04-2022, passed by learned Ad-hoc District Judge-1, Vaijapur in Misc. Civil Appeal No.5/2022, thereby allowing the appeal filed by respondents/defendants and setting aside the order passed below Exhibit-5 in Regular Civil Suit No.330/2021 in favour of the petitioners/plaintiffs.

2. The plaintiffs filed the said suit seeking an injunction that the defendants be restrained by perpetual injunction from causing alteration or change in the roads mentioned as per layout plan and from causing any obstruction, interference in the peaceful enjoyments of the roads by the plaintiffs mentioned in the layout

plan. Along with the suit, interim injunction application - Exhibit-5 is also filed.

3. The defendants appeared and resisted the suit as well as interim injunction application. The Trial Court allowed interim injunction application by order dated 23-12-2021.

4. Being aggrieved by the said order, respondents/defendants filed Misc. Civil Appeal No.5/2022 challenging the said order. The Appellate Court has allowed appeal vide order dated 13-04-2022. Hence, the present petition.

5. Heard the learned Advocate for the petitioners and the learned Advocate for the respondents.

6. Perused the grounds raised in writ petition, annexures thereto and the impugned order.

7. The petitioners/original plaintiffs are before the Trial Court seeking perpetual injunction against respondents/defendants from interfering in their peaceful possession of use of the roads given in the layout. They approached the Trial Court with a case that while constructing the petrol pump, 12 meters road shown in the layout, which is under use of the petitioner, is being encroached by the defendants. Therefore, interim injunction was sought, and it was granted by the Trial Court.

8. It appears from the record that the defendants have made a categorical statement before the Court that they do not have any plan to close the said road. The learned Advocate for the defendants submits that petrol pump is already commissioned and is being operated and there is no damaged and/or encroachment on 12 meters road as is being claimed by the plaintiffs. It is not in dispute that petrol pump is commissioned by defendant no.1 on its own land. There does not appear any material on record to show that there is any obstruction and/or encroachment by defendants on 12 meters road, which is being used by the plaintiffs. In that view of the matter, the Trial Court was not justified in granting injunction in favour of plaintiffs.

9. The Appellate Court has rightly considered the rival contentions as well as record and has passed a well reasoned order. Particularly, taking into consideration the statement made by the defendants that they do not intend to close down the road. No fault can be found with the order passed by the Appellate Court. The writ petition, being devoid of merit, is dismissed. No costs.

[NITIN B. SURYAWANSHI, J.]