

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

WRIT PETITION NO.7134 OF 2022

JAYJAYRAM KASHINATH SHINDE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA THROUGH DISTRICT COLLECTOR AND
OTHERS

...
Advocate for Petitioners : Mr. Balaji S. Chondhekar
AGP for Respondent/State : Mr. K.B. Jadhavar
Advocate for Respondent No.4 : Mr. Abhijit more h/f. Mr. M.K. Jadhav
...

CORAM : MANGESH S. PATIL, J.

DATE : 12.07.2022

ORDER :

Heard both the sides. Rule. The Rule is made returnable forthwith. At the request of the parties, the matter is heard finally at the stage of admission.

2. Though there seems to be a dispute going on between the petitioner and the respondent No.4 before the Revenue Authorities pertaining to the alleged obstructions created by the petitioner in the customary way, substantive suit between the parties is pending, whereby, the petitioner has claimed perpetual injunction restraining the respondent No.4 from disturbing his possession and preventing him from using the disputed way.

3. The trial court had granted temporary injunction in favour of the petitioner. The order has been challenged by the respondent No.4 in the form of an appeal under Section 104 read with Order XLIII of the Code of Civil Procedure. By the order under challenge in this petition, the operation of the order passed by the lower court on the application for temporary

injunction (Exhibit-5) has been stayed till the decision of the Miscellaneous Civil Application.

4. Having heard both the sides, it transpires that there are inconsistent orders of the Revenue Authorities one recognizing existence of the disputed way and the other holding it in the negative.

5. Similarly, the order of the trial court granting temporary injunction in favour of the petitioner has been stayed by the lower appellate court during pendency of the appeal preferred by the respondent No.4.

6. It would be appropriate in the facts and circumstances of the case to direct the lower appellate court to decide the Miscellaneous Civil Appeal finally on its own merits and till then the parties can be directed to maintain *status quo* at the spot as is obtaining today.

7. The Writ Petition is partly allowed. The impugned order passed by the lower appellate court is quashed and set aside. The lower appellate court shall now decide the Miscellaneous Civil Appeal No.12/2022 as expeditiously as possible and in any case within a period of four weeks from today. The parties shall appear before the lower appellate court on 18.07.2022. The parties shall maintain *status quo* in respect of the alleged way as is obtaining today till the Miscellaneous Civil Appeal is decided.

8. Parties to act on the authenticated copy of this order.

(MANGESH S. PATIL, J.)

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