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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL WRIT PETITION NO. 8103 OF 2018**

BHIMASHANKAR VIRBHADRAPPA HIROLI

....PETITIONER

V/s.

**STATE OF MAHARASHTRA THROUGH
DISTRICT COLLECTOR AND ORS**

.....RESPONDENTS

**Mr. Anvil S. Kalekar Advocate for the Petitioner
Mr. C. D. Mali AGP for Respondent nos. 1 & 2
Mr. Surel S. Shah for Respondent nos. 3 & 4**

**CORAM : NITIN W. SAMBRE, J.
DATE: APRIL 20, 2022.**

P.C.:

1) Mamlatdar granted right of way in favour of Respondent-Defendant from the Band located on eastern side of Gat No. 232 which is subject matter of challenge in Suit for declaration, permanent injunction and damages being R.C.S. No. 999/2016.

2) Application Exh. 5 preferred by the Petitioner-Plaintiff came to be allowed vide order dated 07/09/2017 whereby order of Mamlatdar came to be stayed and the Respondent-Defendants are restrained from using road in question.

3) Respondents feeling aggrieved, preferred Misc. Civil appeal No.

132/2017 which is allowed vide impugned order dated 12/04/2018. As such, this Petition by Plaintiff.

4) The submissions are, apart from the fact that there exist alternate road to the Respondent-Defendants, land Gat No. 232 is under active cultivation of the Petitioner. In case if the Defendants are permitted to use the way as ordered by Mamlatdar, same is likely to cause financial loss to the Petitioner as the Petitioner is actively cultivating the land on which right of way is granted. Further contention is, alternate road is already available to the Respondent-Defendants and that being so, Court below committed an error.

5) Shri. Suresh Shah, learned counsel for Respondent nos. 3 & 4 would support the order impugned.

6) Considered submissions.

7) Entitlement of right of way either from land Gat no. 232 or 238 was the bone of contention before the Tahsildar/Mamlatdar. Tahsildar/Mamlatdar after drawing spot panchanama and after having appreciated topography of the land Gat No. 232 and 238, Tahsildar/Mamlatdar has reached to a conclusion that Defendants are entitled for right of way from eastern side of land Gat no. 232 that

too from the Band i.e. boundary. The Trial Court while allowing Exh. 5 appears to have taken technical approach and granted temporary injunction which is reversed by the Appellate Court.

8) The Appellate Court while refusing grant of injunction in favour of the Petitioner-Plaintiff noticed that Panchanama prima facie depicts the topography of land Gat no. 238, and held that same is not feasible for granting right of way as same is located on higher altitude than to Gat no. 232. These finding of facts which are based on Panchanama drawn by the Tahsildar do not warrant any interference as nothing contrary is demonstrated.

9) Apart from above, what can be noticed is, right of way by virtue of Mamlatdar's order is allowed from Band on eastern side of land Gat no. 232. As such, it cannot be said at this stage that Petitioner will be put to financial loss. That being so, no case for interference is made out. Petition stands dismissed.

10) Needless to clarify that findings recorded herein are confined to the extent of deciding an issue of grant of temporary injunction.

[NITIN W. SAMBRE, J.]