

WRIT PETITION NO. 9154 OF 2021

Praful Khimji Shah	...	Petitioner
Versus		
The State of Maharashtra & Ors.	...	Respondents

• • • • •

Mr. Piyush M. Shah with Mr. Dishang Shah and Mr. Hetla Sagar for
the Petitioner.

Mr. B.V.Samant, AGP for the State.

Mr. R.S.Datar for the Respondent Nos. 5 and 7.

Mr. Surel Shah with Mr. S.M. Seegarla, Mr. Swapnil Shikhare and Ms. Shalaka Chamboowala i/b. RMG Law Associates for the Respondent Nos. 8 and 9.

• • • • •

CORAM : NITIN JAMDAR AND
SHARMILA U. DESHMUKH, JJ.

DATE : 4 OCTOBER 2022

P.C. :

Heard the learned Counsel for the parties.

2. Having heard the learned Counsel, it is clear that what is asserted by the Petitioner as against the Respondent Nos. 8 and 9 and the Municipal Council is easementary right of the Petitioner of right of way. According to the Petitioner, activities of the construction carried out by the Respondent Nos. 8 and 9 are obstructing his right of way which the Petitioner has by way of an easement. The learned Counsel for the Respondents state that the

Petitioner has a remedy of filing a civil suit. The Petitioner, if is putting forth his easementary right either by way of necessity or by way prescription, same will have to be established by leading necessary evidence. Therefore, the issue of easementary right raised by the Petitioner more appropriately will have to be decided by the Civil Court.

3. The learned Counsel for the Petitioner accepts and states that the Petitioner will file a civil suit in that regard and states that the contentions raised in this petition be kept open to be considered in the suit that would be filed.

4. Keeping all the contentions of the parties open, in case the Petitioner files a civil suit, writ petition is disposed of.

(SHARMILA U. DESHMUKH, J.)

(NITIN JAMDAR, J.)