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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL WRIT PETITION NO. 9410 OF 2021**

ASHOK HIRAMAN SURYAWANSHI & ORS PETITIONERS

V/s.

GOVERNMENT OF MAHARASHTRA RESPONDENTS
THR COLLECTOR NASHIK AND ORS

Mr. N. R. Bubna advocate for the Petitioner
Mr. C. D. Mali AGP for Respondent nos. 1 to 3
Mr. J. D. Khairnar for Respondent nos. 4 to 29

**CORAM : NITIN W. SAMBRE, J.
DATE: FEBRUARY 3, 2022.**

P.C.:

1) This Petition is by Plaintiff to R.C.S. No. 10/2021, pending on the file of Civil Judge Senior Division, Malegaon, Nashik. It is the case of the Petitioner-Plaintiff that property Gat No. 284, 285 are subject matter in the said Suit in relation to which proceedings under provisions of Mamlatdars' Courts Act were taken out by the Respondent. Tahsildar, after inspection passed an order on 16/07/2019 refusing to grant relief as was prayed whereas in Revisional jurisdiction under Section 23(2) of Mamlatdars' Courts Act, Sub-Divisional Officer allowed the Revision and set aside the order of Tahsildar dated 16/07/2019. Revisional-Applicants i.e. Respondents

herein were permitted to use road by levelling the same and if required by removing impediments, if any.

2) Being aggrieved, aforesaid Suit is preferred in which prayer for grant of temporary injunction is rejected by both the Courts below.

3) Contentions of learned counsel for the Petitioner Mr. Bubna are, orders of Revisional Court i.e. Sub-Divisional Court passed under Section 23 of the Mamlatdars' Courts Act is in his absence as Petitioner-Plaintiff were not party to the same. According to him, in the wake of above, Suit came to be preferred. He would further claim that once there does not exist a road, removal of impediment or encroachment on such road does not arise. According to him, under the said order, contrary to revenue record new way is granted from the property of the Petitioners which is not permissible in law and that being so, order impugned passed by the Court below thereby refusing to grant temporary injunction is not sustainable.

4) Further contentions of Mr. Bubna are, Some of the property is converted to non-agricultural use. He would further claim that there is no evidence of existence of road and that being so, orders impugned are liable to be set aside.

5) While countering aforesaid submissions, Mr. Khairnar, learned counsel for Respondent nos. 4 to 29, based on his affidavit would urge that orders impugned are just and proper and does not call for any interference.

6) Orders impugned in the present Petition are in relation to the relief claimed by way of temporary injunction thereby restraining Respondent from using the way as has been ordered under the Mamlatdars' Courts Act. Learned court of Civil Judge Senior Division rejected the prayer for injunction which was confirmed by the Appellate Court vide order dated 28/10/2021.

7) I have perused both these orders.

8) Order refusing injunction in favour of the Petitioner is based on village map, consent letter executed by Plaintiff no. 1 in favour of Grampanchayat on 04/01/2016, spot inspection report drawn by the Tahsildar which is duly signed by Plaintiff nos. 1 & 5 and the finding that there does not exist an alternate road to the claimants before S.D.O. i.e. Respondent herein.

9) All these findings are based on material available on record. The fact remains that Petitioner has not raised any challenge to the

consent letter executed by the Plaintiffs and the fact that Plaintiff nos. 1 & 5 are party to the spot inspection report drawn by Tahsildar depicting existence of Vahivat road primarily establishes case of the Respondent against present Petitioner-Plaintiff.

10) In the wake of observations of both the Courts below, on the aforesaid issues, finding of fact recorded by both courts that the Petitioners has failed to make out a prima facie case appears to be quite justified.

11) In the aforesaid background, against concurrent findings, no case for interference in extraordinary jurisdiction is made out. Petition as such fails, stands dismissed.

12) In view of statement made on instructions by the learned counsel for the Petitioner that the Petitioner intends to question the order of this Court before the Apex Court, the arrangement recorded in the order dated 22/12/2021 i.e. directing Tahsildar not to proceed ahead based on the notice dated 23/11/2021 is to be continued for a period of one week.

[NITIN W. SAMBRE, J.]