

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 2259 OF 2010

- (1) Sheikh Aminnur Rashid S/o Sheikh Vazir
Aged about 65 years, Occ. : Agriculturist
- (2) Sheikh Harun Rashid S/o Sheikh Vazir.
Aged about 55 years, Occ. : Agriculturist.
- (3) Yadav Nagobo Mantewad
Aged about 75 years, Occ. : Agriculturist,
All Resident of : Dhanki, Taluka : Umarkhed,
District : Yeotmal.

.... Petitioners

- Versus -

- (1) State Government Maharashtra,
Through its Sub Divisional Officer,
Pusad, Ta. Pusad, Dist. Yavatmal,
- (2) Tahsildar Umarkhed,
Tahsil Office, Umarkhed,
Ta. Umarkhed, Dist. Yavatmal.
- (3) Janardhan Nagorao Yerawar,
Age major, Occ. : Agriculturist,
R/o. Dhanki, Taluka - Umarkhed,
Dist : Yeotmal.
- (4) Prakash Vankytesh Deshpande,
Age major, Occ. : Agriculturist,
R/o : Dhanki, Taluka - Umarkhed,
Dist : Yeotmal.
- (5) Sunil Vishwanath Khudawant,
Age major, Occ. : Agriculturist,
R/o. Dhanki, Taluka - Umarkhed,
Dist : Yeotmal.

.... Respondents

Mr. A. P. Sadavarte, Advocate for the petitioners
Mr. S. M. Ukey, Addl. G. P. for respondents 1 and 2
None for respondents 3 to 5

CORAM : ROHIT B. DEO, J.
DATED : 11th January, 2022.

ORAL JUDGMENT

The petitioners, who are the owners of agricultural field assigned Survey 8/1, 8/1-A and 94/B, are challenging the concurrent orders rendered by the Tahsildar, Umarkhed, and then by the Sub Divisional Officer, Pusad, in exercise of jurisdiction under Section 23(2) of the Mamlatdar's Courts, Act 1906 whereby the petitioners are injuncted from preventing the private respondents from approaching their respective fields by the disputed way on the common *dhura* of field Survey 7, 8/1, 8/1-A and 94/2.

2. The submission of the learned counsel Mr. Sadavarte is that the authority committed a jurisdictional error in as much as what is granted, under the garb of an injunctive relief, is an entirely new road, which is not the scope of Section 5 of the Act. Mr. Sadavarte would argue that a new road or way could have been granted only in exercise of power and in appropriate proceeding under Section 143 of

the Maharashtra Land Revenue Code, 1966.

3. As a proposition of law, the submission canvassed by Mr. Sadawarte is unexceptionable. However, the obstacle in the way of Mr. Sadawarte, is that the authorities below were alive to the position of law. The authorities have not granted a new way. The authorities below have accepted the contention of the plaintiffs who are contesting private respondents, that the way in question was used by them since many years, and the cause of action is that the one private respondent was prevented from using the way when he was transporting soyabean.

4. The issue is, whether the finding of fact which is recorded by the authorities concurrently, can be revisited by writ Court.

5. It is too late in the day to invite the writ Court to evaluate the material on record and to revisit a finding of fact, much less a finding of fact concurrently recorded, on the premise that the finding is erroneous. An error does not render the order or finding jurisdictionally bad. A Tribunal is entitled to err within jurisdiction.

In the present case, interference in the concurrent findings would be warranted only if, the learned counsel Mr. Sadawarte is in a position to persuade this Court to hold that there is a grave error or misdirection as would cause miscarriage of justice or finding of fact is perverse in the sense that such a finding would not have been recorded by any reasonable mind. Error *per se*, even concurrently committed, would not justify interference in writ jurisdiction. While the precedents are galore, suffice it to refer the following observations of the Hon'ble Supreme Court in the case of ***M/s Garment Craft Vs. Prakash Chand Goel in Civil Appeal 314 of 2022.***

“18. Having heard the counsel for the parties, we are clearly of the view that the impugned order is contrary to law and cannot be sustained for several reasons, but primarily for deviation from the limited jurisdiction exercised by the High Court under Article 227 of the Constitution of India. The High Court exercising supervisory jurisdiction does not act as a court of first appeal to reappreciate, reweigh the evidence or facts upon which the determination under challenge is based. Supervisory jurisdiction is not to correct every error of fact or even a legal flaw when the final finding is justified or can be supported. The High Court is not to substitute its own decision on facts and conclusion, for that of the inferior court or tribunal.¹ The jurisdiction exercised is in the nature of correctional jurisdiction to set right grave dereliction of duty or flagrant abuse, violation of fundamental principles of law or justice. The power under Article 227 is exercised sparingly in appropriate cases, like when there is no evidence at all to

justify, or the finding is so perverse that no reasonable person can possibly come to such a conclusion that the court or tribunal has come to. It is axiomatic that such discretionary relief must be exercised to ensure there is no miscarriage of justice. Explaining the scope of jurisdiction under Article 227, this Court in Estralla Rubber v. Dass Estate (P) Ltd. has observed:-

“6. The scope and ambit of exercise of power and jurisdiction by a High Court under Article 227 of the Constitution of India is examined and explained in a number of decisions of this Court. The exercise of power under this article involves a duty on the High Court to keep inferior courts and tribunals within the bounds of their authority and to see that they do the duty expected or required of them in a legal manner. The High Court is not vested with any unlimited prerogative to correct all kinds of hardship or wrong decisions made within the limits of the jurisdiction of the subordinate courts or tribunals. Exercise of this power and interfering with the orders of the courts or tribunals is restricted to cases of serious dereliction of duty and flagrant violation of fundamental principles of law or justice, where if the High Court does not interfere, a grave injustice remains uncorrected. It is also well settled that the High Court while acting under this article cannot exercise its power as an appellate court or substitute its own judgment in place of that of the subordinate court to correct an error, which is not apparent on the face of the record. The High Court can set aside or ignore the findings of facts of an inferior court or tribunal, if there is no evidence at all to justify or the finding is so perverse, that no reasonable person can possibly come to such a conclusion, which the court or tribunal has come to.”

6. The application under Section 5 of the Act is tried as a suit. The Tahsildar has recorded evidence. The spot is inspected. The oral evidence and the spot inspection is relied upon by the first Court to arrive at a finding that the road *qua* which the injunctive relief is sought was used by the contesting private respondents since years. This finding is affirmed in appeal.

7. Nothing is demonstrated to suggest that the finding is based on no evidence. Even if, the finding is based on some evidence, I would be loath to interfere since the limitations of writ jurisdiction do not permit interference, even with an erroneous finding, unless as noted *supra*, the finding is perverse or is actuated by either a jurisdictional error or an error of law or misdirection which is grave enough to occasion miscarriage of justice.

8. The petition is dismissed. No order as to costs.

JUDGE

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