

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

WRIT PETITION NO. 2745 OF 2021

Prabhakar s/o Manikrao Gaike
Vs.
Ganesh s/o Bhaiyalal Meshram and anr.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr. Sachin W. Sambre, Advocate for petitioner.
Mr. Dhiraj R. Bhoyar, Advocate for respondents.

CORAM : MANISH PITALE J.

DATE : 17.03.2022.

By this Writ Petition, the petitioner (original defendant) has approached this Court challenging order dated 26.02.2021 passed by the District Court, Wardha, whereby an appeal filed by the respondents herein was allowed and order of temporary injunction came to be passed against the petitioner.

2. The dispute between the parties pertains to claim of the petitioner regarding access way to his agricultural field from the agricultural field of the respondents. In this connection, the petitioner had initiated proceedings before the Tahsildar under the provisions of Maharashtra Land Revenue Code seeking a direction against the respondents for grant of access way to the agricultural field. The Tahsildar passed an order

on 21.06.2016 in favour of the petitioner. The same was challenged before the Sub-Divisional Officer but, the challenge was rejected and the order of the Tahsildar was confirmed. The matter reached to the Collector and by order dated 26.07.2018, the Collector set aside the order passed by the authorities below and remanded the matter back to the Tahsildar for consideration afresh.

3. Thereafter, by order dated 12.02.2019, the Tahsildar again accepted the contentions of the petitioner and granted access way to the field of the petitioner through the agricultural field of the respondents. It was specifically directed that while using such access way, it shall be ensured that no damage is caused to the crops of the respondents herein.

4. It is in this backdrop that the respondents filed Regular Civil Suit No.143/2019 before the Court of Civil Judge Junior Division, Wardha. In the said suit, the respondents filed an application for grant of temporary injunction, praying for a direction to restrain the petitioner from using the said access way.

5. The said application was opposed by the petitioner. By order dated 26.07.2019, the aforesaid Court found that the respondents have failed to make out a *prima facie* case in their favour and also found that the balance of convenience did not lie in their favour and

they had failed to show that they will suffer irreparable loss, if the temporary injunction is not granted. On this basis the application for temporary injunction was rejected.

6. Aggrieved by the same, the respondents filed an appeal before the District Court. As noted above, the appeal was allowed, the order of the Court below was set aside and the application for temporary injunction stood allowed.

7. The petitioner approached this Court by filing the present writ petition. On 06/08/2021, this Court issued notice and granted interim stay of the impugned order, as a consequence of which, admittedly, the petitioner has continued to use the said access way to his agricultural field.

8. Mr. Sambre, learned counsel appearing for the petitioner submitted that the District Court in the present case committed an error in reversing the order of the Court below and allowing the application for temporary injunction. It was submitted that the Tahsildar, not once but, twice had found on facts that the petitioner deserved the access way pleaded by him and that pursuant to such orders he was indeed using the said access way to reach his agricultural field.

9. It was further submitted that there were spot inspection reports on record during the proceedings before the Tahsildar in support of the contentions of the petitioner and that the District Court erred in ignoring the same while allowing the appeal against the petitioner. On this basis, it was submitted that the Writ Petition deserved to be allowed.

10. On the other hand, Mr. Bhoyar, the learned counsel for the respondents submitted that the impugned order passed by the District Court was in consonance with the provisions of Maharashtra Land Revenue Code, particularly Section 143 thereof. It was submitted that merely because an access way being used by the petitioner and his Predecessor, was allegedly blocked by other field owners, it could not be a ground for invoking Section 143 to grant way through the field of the respondents. It was submitted that the petitioner was entitled only to a reasonable access, which he already had and insisting upon using the access way through the field of the respondents, is not justified. On this basis, it was submitted that the Writ Petition deserved to be dismissed.

11. This Court has perused the material on record and heard the learned counsel for the parties in that context. There is no dispute about the fact that the Tahsildar in the first round, as well as in the second round upon remand, held in favour of the petitioner.

While reaching conclusions in favour of the petitioner reference was made to spot inspection reports and other material on record. There can be no quarrel with the proposition that the findings rendered by the Tahsildar would not to be binding on the Civil Court, but, the same can be taken into consideration while deciding the question as to whether the plaintiff (in this case the respondents) deserved an order of temporary injunction in their favour. In the present case, the trial Court had exercised its discretion and rejected the application for temporary injunction, but, the District Court interfered with the same by passing impugned order.

12. A perusal of the impugned order shows that the reasoning is found only in paragraph Nos.25 and 26. The reasoning is cryptic and reference is made to Section 143 of the aforesaid Code, without discussing the reasons given by the trial Court while dismissing the application for temporary injunction. It is merely observed that the legality of the order of the Tahsildar itself is in question, which would require trial and only on this ground, it is held that the respondents deserved an order of temporary injunction in their favour. There is no discussion on the well known parameters for deciding the question of temporary injunction i.e. strong *prima facie* case, balance of convenience and grave and irreparable loss that may be suffered if temporary injunction is not granted. Therefore, the impugned order is found to be erroneous to that extent.

13. The record shows that pursuant to the orders passed by the Tahsildar, the petitioner has been indeed using the access way in question. The apprehension expressed on behalf of the respondents may be justified that using such access way could cause damage to the crops but, the same is taken care of by the observations made by the Tahsildar in the order dated 12.02.2019, that the petitioner shall ensure that no damage is caused to the crops of the respondents while using such access way. This Court reiterates the said direction given to the petitioner.

14. Considering the nature of dispute between the parties and the fact that the proceedings have been pending before the revenue authorities from the year 2016, it would be in the interest of justice that the proceedings in the civil suit are expedited.

15. In view of above, this Court is of the opinion that the impugned order deserves to be set aside. Accordingly, the writ petition is allowed. The impugned order is set aside.

16. At the same time, the petitioner is directed that while using the access way to his field, through the agricultural field of the respondents, it is ensured that damage is not caused to the crops of the respondents.

17. The Trial Court i.e. Civil Judge Junior Division, Wardha, is directed to expedite the proceedings in Regular Civil Suit No.143/2019 and to ensure that the suit is disposed of within a period of six months from today.

JUDGE

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2022.03.21
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