

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.2110 OF 2023

**DATTU NAMDEO SHELAR
VERSUS
THE DISTRICT COLLECTOR, AHMEDNAGAR AND OTHERS**

...
Advocate for Petitioner : Mr. Devdatt P. Palodkar
AGP for Respondents – State : Mr. R.B. Bagul
Advocate for Respondent Nos. 3(a) to 3(d) : Mr. A.S. More
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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 03rd APRIL, 2023

PER COURT :

1. By this petition, the petitioner challenges order dated 17/02/2020, passed by learned Civil Judge, Senior Division, Shrigonda, below Exhibit-5 in Regular Civil Suit No.227/2018, confirmed by learned District Judge-1, Shrigonda, in Misc. Civil Appeal No.08/2020.

2. Petitioner has filed the suit challenging order dated 06/02/2018, passed by the Tahsildar, Shrigonda, under Section 5 of the Mamlatdars' Courts Act in Rasta Case No.31/2017 filed by defendant Nos. 3 to 5, thereby directing removal of obstruction allegedly caused by the petitioner/plaintiff. Along with the suit application Exhibit-5 is filed for temporary injunction, seeking stay to the impugned order of Tahsildar. The suit is resisted by the defendants by filing written statement and say. After hearing the

parties, trial Court rejected application Exhibit-5. The said order was unsuccessfully challenged by the petitioner/plaintiff by filing M.C.A. No.08/2020.

3. Heard learned advocate for petitioner, learned advocate for respondent Nos.3(a) to 3(d) and learned Additional Government Pleader for State. Perused the grounds raised in the petition, annexures thereto and documents placed on record.

4. Learned advocate for petitioner strenuously submits that by taking undue advantage of the order passed by Tahsildar defendants are trying to create a new way in the middle of Gut No.434. In fact, the defendants have alternate way to approach their respective fields. These aspects are ignored by the trial Court as well as by the appellate Court, while rejecting application Exhibit-5. By placing reliance on the village map, learned advocate for petitioner tried to contend that there are alternate ways available to the defendants and hence, interim relief ought to have been granted in his favour. It is also alleged that the Tahsildar who passed the impugned order is relative of the defendants and therefore, collusive order in favour of the defendants is passed. Though the transfer application was filed seeking transfer of the matter from said Tahsildar to any other Tahsildar, before any order could be passed in that application, Tahsildar passed the impugned

order observing therein that there is no merit in the transfer application.

5. Learned advocate for respondent Nos. 3(a) to 3(d), on the other hand, strenuously opposed the petition and supported the impugned order. He submits that the Tahsildar, trial Court as well as the appellate Court are against the petitioner and no case is made out by the petitioner to exercise extraordinary writ jurisdiction.

6. *Prima facie* the record indicates that Tahsildar after visiting the site and preparing panchanama and site map, has passed the order in favour of defendants. Trial Court and the first appellate Court have taken into consideration that there is no *prima facie* case made out by the petitioner and balance of convenience is not in his favour. It appears that irreparable loss would be caused to the defendants if injunction is granted in favour of the petitioner. In that view of the matter, this Court is of the view that no interference is warranted in the impugned order.

7. Petitioner is at liberty to prove his contentions by leading evidence in support of his submissions which are advanced before this Court. Since it is informed that the pleadings are complete, issues are framed and the suit is of the year 2018, considering the limited controversy, it would be desirable to direct the trial Court to expedite the suit.

8. In the result, writ petition is dismissed. Trial Court is directed to decide the suit within three months from the date of receipt of writ of this order. Parties shall cooperate in expeditious disposal of the suit.

9. At this stage, learned advocate for petitioner makes a grievance that defendants are trying to destroy his shed, borewell and some trees under the guise of removal of obstruction. Learned advocate for defendants, on instructions from the defendant, who is present in the Court, undertakes not to do so.

10. Learned advocate for defendants also pointed out that plaintiff has laid pipeline on the road, which is causing obstruction to the defendants to access their field. Learned advocate for plaintiff, on instructions from the plaintiff who is present in the Court, undertakes to lay the said pipeline under the ground.

(NITIN B. SURYAWANSHI, J.)