

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

CIVIL WRIT PETITION NO. 3651 OF 2023

Shri. Bhausaheb Ganpat Jagtap & Anr.

...Petitioners

Versus

Shri. Vilas Dnyandeo Jagtap & Anr.

...Respondents

....

Mr. Shrikant S. Take – Advocate for the petitioners

Mr. Mahesh K. Bhosale – Advocate for respondent no. 1

....

CORAM : NITIN B. SURYAWANSHI, J.

DATE : MARCH 30, 2023

PER COURT : -

1. The petitioners are aggrieved by the order passed by the learned District Judge – 8, Ahmednagar in Misc. Civil Appeal No. 53 of 2021 thereby allowing the appeal and setting aside the order passed by the Trial Court below Exhibit – 5 in Regular Civil Suit No. 240 of 2021.

2. The defendants/respondents filed Wahiwat (Rasta) Case No. 59 of 2020 against the petitioners/plaintiffs seeking removal of obstruction in their way, which came to be allowed by the Tahsildar by order dated 04.06.2021.

3. The petitioners challenged the said order by filing Revision Application before the Sub-Divisional Officer and simultaneously the petitioners filed Reg. Civil Suit challenging the said order. Along with the suit, the application Exhibit – 5 was filed

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seeking temporary injunction restraining the defendants from creating way from the suit property and from disturbing the plaintiffs possession over the suit property. By order dated 21.10.2021, the Trial Court allowed injunction application. The defendants challenged the order of the Trial Court by filing Misc. Civil Appeal which is allowed by the District Court. Hence, the present petition.

4. Heard learned advocate for the petitioners and the respondents, read the grounds raised, annexures and the orders impugned in the present petition.

5. Admittedly, the Tahsildar has allowed the application filed by the defendants under Section 5 of the Mamlatdars' Courts Act, 1906, after visiting the site and preparing panchanama. The Tahsildar has, after hearing the parties, recorded a finding that as per the panchanama and map prepared at the time of site inspection, it was found that the road from point A to B is open but, it is blocked from point B to C. Again the road is open from point C to D. If there was no way in existence between point B to C, then the road between point B to D could not have been in operating condition and the Tahsildar allowed the application filed by the defendants thereby directing removal of obstruction created by the plaintiffs.

6. While allowing the application Exhibit – 5, the Trial Court has observed that on 24.06.2021, as per the order of Tahsildar, Circle Officer in police bandobast removed obstruction and with the help of JCB opened the way at 11:00 am on the same day. It is further observed by the Trial Court that, it is on record that the road was not in existence and that land was ploughed prior to October – 2020. The Trial Court has passed a non speaking order and has erroneously observed that a road was not in existence. The said observation is contrary to the finding of the fact recorded by the Tahsildar. The Trial Court appears to have been swayed away by the fact that the summons were served on the defendants prior to 11:00 am on 24.06.2021 and instead of appearing before the court, the Circle Officer and defendants with the help of police machinery removed obstructions from the suit property and thereafter they have appeared in the court. The trial Court has, therefore, observed that any person cannot get benefit of its safe act or wrong(?). The said finding *prima facie* appears to be erroneous.

. The Trial Court has not applied its mind to the settled principles such as, *prima facie* case, balance of convenience and irreparable loss, which are foundation for allowing or rejecting the temporary injunction application. The order passed by the Trial Court below Exhibit-5 is, therefore, vitiated on the ground of non application of mind.

7. From the facts and documents on record, it is clear that there is no *prima facie* case in favour of the plaintiffs and balance of convenience does not lie in their favour. No irreparable loss would be caused to the plaintiffs if the injunction is refused. On the contrary, if the injunction is granted, irreparable loss would be caused to the defendants as their way would be obstructed. The order of the appellate court is a well reasoned order and the same is not liable to be interfered with.

8. There is no illegality or perversity in the order impugned in the present petition. The petitioner has failed to make out a case for exercising the extraordinary writ jurisdiction. Writ petition being devoid of merits is dismissed.

[NITIN B. SURYAWANSHI]
JUDGE