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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3687 OF 2023

Ashok Karbhari Amate and Others

PETITIONERS

VERSUS

The State of Maharashtra and Others

RESPONDENTS

.....

Mr. Prashant R. Nagare, Advocate for the petitioners

Mr. S. N. Kendre, AGP for respondent - State

Mr. Krushna D. Mote, Advocate for respondents No.3 and 4

.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 3rd OCTOBER, 2023

ORDER :

1. Petitioners are aggrieved by order passed by learned District Judge-6 Ahmednagar in Miscellaneous Civil Appeal No. 174 of 2022 thereby setting aside order dated 22nd November, 2022 passed by learned Civil Judge, Senior Division, Ahmednagar below Exhibit-5 in Regular Civil Suit No. 330 of 2022

2. Petitioners approached Tahsildar by filing application under section 143 of the Maharashtra Land Revenue Code, seeking cart way to approach their respective fields. After hearing the parties, Tahsildar, by order dated 2nd May, 2022 allowed the application

and granted cart way to petitioners. Respondents challenged said decision by filing Special Civil Suit No. 330 of 2022. Along with the suit, application Exhibit-5 was filed by respondents seeking stay to the order passed by Tahsildar. Said application, after hearing the parties, was rejected by the Trial Court. Respondents challenged said decision before District Court. District Court allowed the appeal. Hence present writ petition.

3. Heard learned advocates for the parties. Perused the memo of writ petition, its annexures and the impugned order and citations relied on by the learned advocates.

4. Learned advocate for respondents No.3 and 4 strongly opposed the petition, by placing reliance on "***Krushna Damaji Choudhari and Another V/s Additional Commissioner, Nagpur and Others***" 2012 (1) Mh.L.J. 795. According to him, the Tahsildar has in fact passed an order under section 5 of Mamlatdars' Courts Act and not under section 143 of the Maharashtra Land Revenue Code. He, therefore, submits that Appellate Court is justified in allowing the appeal and granting injunction in favour of respondents. He also relies on the reasons assigned by the Appellate Court while passing the impugned order.

5. It is a matter of record that Tahsildar has passed order under section 143 of the MLR Code, after conducting site inspection and *panchanama* and after hearing parties before him. In this view of the matter, Trial Court is justified in rejecting application Exhibit-5 by assigning proper reasons, including that since the new cart way granted by Tahsildar is from boundary, crop of plaintiffs is not like to be damaged. Trial Court, therefore, is justified in coming to the conclusion that no *prima facie* case is made out by plaintiffs and balance of convenience is not in favour of plaintiffs.

6. Appellate Court has interfered in the order passed by Trial Court on the ground that receipts of sell of sugar cane by defendants to sugar factory show that they have alternate way to approach their fields. The approach on the part of Appellate Court is erroneous. Merely because another view is possible, Appellate Court has interfered in the discretionary order passed by Trial Court. In fact, facts of present case indicate that irreparable loss would be caused to petitioners / defendants, if interim injunction is granted in favour of plaintiffs, as defendants would be deprived of right of way to approach their respective fields.

7. When discretion is exercised by the Trial Court in respect of

grant of temporary injunction, it is not permissible for the Appellate Court to interfere in the same, unless exercise of discretion by the Trial Court is palpably incorrect or untenable. (vide "*Wander Ltd and Another V/s Antox India Pvt. Ltd.*," 1990 (supp) SCC 727, and "*Mohd. Mehtab Khan and Others V/s Khushnuma Ibrahim Khan and Others*" (2013) 9 SCC 221).

8. By the impugned order, Appellate Court has interfered in discretion exercised by the Trial Court, without coming to the conclusion that order of Trial Court is palpably incorrect or untenable. View taken by Trial Court is a possible view and the same was not liable to be interfered with by the Appellate Court.

11. In "*Krushna Damaji Choudhari*" (supra), learned Single Judge of this Court has held that application under section 143 of the Maharashtra Land Revenue Code cannot be treated as suit under section 5 of the Mamlatdars' Courts Act and the Tahsildar exercising powers under section 143 cannot direct removal of obstruction.

In the case in hand, it appears that new cart way is allowed by Tahsildar in proceedings under section 143 of the Maharashtra Land Revenue Code and a consequential order of removal of obstruction is passed, which cannot be faulted with.

The above citation, therefore, is of no assistance to the respondents.

12. For the aforestated reasons, writ petition deserves to be allowed. Hence, the following order -

ORDER

- A. Writ Petition is allowed in terms of prayer clause "B".
- B. Impugned order dated 27th February, 2023 passed by District Judge-6, Ahmednagar in Miscellaneous Civil Appeal No. 174 of 2022 is quashed and set aside.
- C. It is made clear that observations in this order are *prima facie* and Trial Court shall not be influenced by them while deciding the suit on merits .

[NITIN B. SURYAWANSHI]
JUDGE