

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8090 OF 2022

1. Arjun s/o Sonyabapu Dangat
2. Ganesh s/o Sonyabapu Dangat
3. Tarabai w/o Sonyabapu Dangat
4. Jyoti Navnit Dahatonde
5. Mirabai Vilas Dhere

PETITIONERS

VERSUS

1. The State of Maharashtra
Through Collector, Ahmednagar.
2. Tahsildar, Rahuri.
3. The Circle Officer, Vambori, Ahmednagar.
4. Pandurang Dagadu Gayke
5. Navnath Pandurang Gayke

RESPONDENTS

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Mr. R.S. Kasar, Advocate for the petitioners.

Mr. A.T. Kanawade, Advocate for respondents No. 4 and 5.

Mr. S.R. Yadav Lonikar, AGP for respondents No. 1 to 3.

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[CORAM : NITIN B. SURYAWANSHI, J.]

RESERVED ON: 5th JULY, 2023

PRONOUNCED ON: 11th JULY, 2023

ORDER :

1. By this petition filed under Article 227 of the Constitution of India, petitioners challenge the order dated 08.07.2022, passed by learned District Judge-9, Ahmednagar, in Miscellaneous Civil Appeal No. 14 of 2022.

2. By filing the suit petitioners/plaintiffs challenged the decision of Mamlatdar, in Rasta Case No. 46/2021 filed by

defendant Nos. 4 and 5. By application Exhibit-5 interim stay to the decision of Mamlatdar is sought. Trial Court rejected the application. Petitioners unsuccessfully challenged the said order by filing Miscellaneous Civil Appeal No. 14/2022.

3. Heard the learned advocate for the petitioners and learned advocates for the respondents. Perused the memo of writ petition, annexures thereto and the impugned orders.

4. It is evident from the record that respondent Nos. 4 and 5 filed Road (Wahivat) Case No. 81/2020 under section 5 of the Mamlatdars' Courts Act 1906. The same was rejected on merits by the Mamlatdar by order dated 31.12.2020. Thereafter, respondent Nos. 4 and 5 filed Rasta Case No. 46/2021 under section 143 of the Maharashtra Land Revenue Code 1966, seeking a new right of way of 8 to 10 feet width to approach their land Gat No. 661 from southern boundary of Gat No. 660/1 and northern boundary of Gat No. 660/2. Tahsildar after conducting site inspection, arrived at a conclusion that respondents have no other alternate road to approach their land Gat No. 661 and hence, allowed the application filed by respondent Nos. 4 and 5. This order is challenged by the petitioners by filing Regular Civil Suit No. 592/2021.

5. In support of application Exhibit-5, affidavits of adjoining land owners are filed wherein they have stated that, the defendants have alternate road to approach their land. However, except bare words there is nothing on record to show that alternate road is available to the defendants. Thus it appears that plaintiffs have prima facie failed to prove the availability of alternate road to the defendants. Trial Court, therefore has rightly come to a conclusion that prima facie it does not appear that defendant Nos. 4 and 5 have alternate road to approach their field. Trial Court by relying on the order passed by Tahsildar rejected application Exhibit-5.

6. The Appellate Court has confirmed the finding of the Trial Court observing that new road granted by Tahsildar is from the common bandh of Gat No. 660/1 and Gat No. 660/2. By referring to the site map dated 20.08.2021, Appellate Court has observed that, *'besides this in the spot map dtd. 20.08.2021 also the existing road is shown extending from Gat No. 659/2 to Gat No. 659/1. It get open in Gat No. 660/1 and thereafter it appears there is no road extending to the Gat No. 661, 662/2/1 from the same boundary and consequently the Tahsildar is pleased to get open the very closed road'*.

7. From the documents placed on record it appears that the Tahsildar has granted right of way from the boundary of Gat No. 660/1 and 660/2. So no new road is created from the middle of Gat No. 660/1. Trial Court and the Appellate Court have passed well reasoned orders on the basis of record. Both the Courts have properly appreciated the facts of the case, arguments advanced and the citations relied upon. Concurrent finding of facts recorded by both the Courts are not liable to be interfered with in the extra ordinary writ jurisdiction. No illegality or perversity is found in the orders impugned in the present petition. No case is made out by the petitioners to exercise extra ordinary writ jurisdiction. Writ petition being devoid of merit, is dismissed.

8. At this stage, learned advocate for the petitioners prays for continuation of ad-interim relief. Ad-interim relief granted in favour of petitioners shall continue to operate for a period of four weeks from today.

[NITIN B. SURYAWANSHI, J.]