

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

WRIT PETITION NO.13956 OF 2021

**VILAS BHAU VANJARE AND OTHERS
VERSUS
KAMAL TARACHAND THORAT AND OTHERS**

...
Mr. Shubham Jaybhar, Advocate h/f Mr. Dattatraya R. Jaybhar,
Advocate for Petitioners
Mr. S.N. Kendre, AGP for Respondents – State
Mr. S.R. Wakale, Advocate for Respondent Nos.1 to 6
...

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 03RD OCTOBER, 2023

PER COURT :

1. By this petition, petitioners challenge judgment and order dated 12/10/2021, passed by learned District Judge-2, Shrigonda, in Misc. Civil Appeal No.19/2021, thereby confirming order dated 29/04/2021, passed by learned Civil Judge, Senior Division, Shrigonda, below Exhibit-5 in Regular Civil Suit No.171/2020.

2. Petitioners/original plaintiffs filed suit for declaration and injunction against respondents/defendants. Injunction is also sought that defendants be restrained from creating a way in suit property owned by petitioners, pursuant to the orders passed by Tahsildar in Wahivat Case No.20/2019. Along with suit, application Exhibit-5 is filed for temporary injunction. Respondents/defendants

appeared and opposed the suit as well as temporary injunction application. Trial Court has rejected the application and the said order is confirmed by appellate Court. Hence, the present petition.

3. Heard learned advocate for petitioners, learned advocate for respondent Nos.1 to 6 and learned Assistant Government Pleader for respondent Nos.7 and 8. Perused writ petition memo, annexures thereto and impugned order.

4. It is the case of petitioners that they were not party to Wahivat Case No.20/2019 and therefore, orders passed in that case are not binding upon them.

5. Both the Courts have given sound reasons while rejecting temporary injunction in favour of petitioners. Concurrent findings of fact are recorded that petitioners have failed to prove *prima facie* case and balance of convenience in their favour, and that irreparable loss would be caused to them if temporary injunction is not granted to them. Both the orders are supported by documents placed on record.

5. Learned advocate for petitioners relied on the order passed by learned Single Judge of this Court in Writ Petition No.13491/2021 [*Sujeet Ramesh Salunke and Others Vs. The State of Maharashtra Through Its Secretary and Others*]. In that case,

this Court has held that petitioners therein were neither party to the proceeding before Tahsildar under Section 5 of the Mamlatdars' Courts Act, 1906, nor any notice was issued to them. Therefore, decision would only bind the persons who were parties to the proceeding. There cannot be any dispute about said proposition. However, considering the concurrent findings recorded by both the Courts, no case is made out by petitioners to warrant interference in exercise of extraordinary writ jurisdiction. Writ petition being devoid of merit is dismissed.

(NITIN B. SURYAWANSHI, J.)