

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

31 WRIT PETITION NO.1070 OF 2023

**DHONDIBHAU GANGARAM GUJAR
VERSUS
BHAUSAHEB BABAN THORAT AND OTHERS**

...
Advocate for Petitioner : Mr. Kasar Rajendra Sudam

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CORAM : SHARMILA U. DESHMUKH, J.

DATE : 01-02-2023

PER COURT :

. By this petition, the petitioner challenges the order dated 29.11.2022 passed by the Appellate Court, whereby the order of the Trial Court below Exh.5 dated 22.12.2021 was upheld and the application for injunction was confirmed.

2. Regular Civil Suit No.235 of 2020 was instituted by the respondent no.1 seeking an order of perpetual injunction pursuant to the order passed in Rasta Case No.120 of 2017 whereby the petitioner was granted right of way through the property of the respondent no.1 i.e. Gat No. 772.

3. Learned counsel for the petitioner submits that the petitioner is the owner of Gat Nos.771/1 and 771/2 and as the respondent no.1 had obstructed the existing right of way through Gat

No.772, an application was made to the Tahsildar pursuant to which spot panchanama was conducted on 05.02.2020 which shows that there is existing way through Gat No.772 to the land of the petitioner bearing Gat Nos. 771 and 772 which is obstructed by the owner of Gat No.772.

4. The learned counsel for the petitioner relies on the said spot panchanama to support his case that the injunction ought not to have been granted in favour of respondent no.1. Perusal of the spot panchanama shows that the respondent no. 1 was not given notice of the said spot inspection and the inspection has been carried out in the presence of the father of the respondent no. 1. The learned counsel for the petitioner is unable to demonstrate as to why the notice was not issued to respondent no. 1 who was admittedly owner of Gat No. 772 and the petitioner had knowledge about the same. The issuance of the notice to the father of the respondent no.1 does not assist the case of the petitioner and the spot panchanama cannot be relied upon for the said purpose.

5. The Appellate Court while confirming the findings of the trial Court has specifically noted this fact and has observed that the petitioner has not acted in good faith and obtained the order of the

Tahsildar behind back of the respondent no. 1 and as such has rejected the appeal filed by the petitioner. Another aspect which assumes importance is that the respondent no. 1 has only sought an order of temporary injunction from obstruction being caused at the hands of the petitioner to the peaceful possession over the suit property, which is necessarily required to be granted considering the fact that the spot inspection was conducted without the presence of the respondent no.1.

6. For the reasons stated above, there is no infirmity in the *prima facie* findings which have been arrived at by the trial Court and the Appellate Court while allowing the application for injunction filed by the respondent no. 1.

7. Writ petition is devoid of merits and stands dismissed.

(SHARMILA U. DESHMUKH, J.)

GGP