

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6501 OF 2022

Pushpa Laxman Vartak

Age : 68 years, Occu.:Agriculture,
Residing at : Dhovali – Mandlai,
Sagarshet Road, Taluka : Vasai,
District : Palghar – 401 207

.. Petitioner

Versus

- 1. Circle Inspector, Manikpur**
Office at : Circle Inspector Office,
Manikpur, Taluka: Vasai
- 2. Tahsildar, Vasai**
Office at:
Tahsildar & Executive Magistrates
Office, Vasai, Revenue Department,
Killa Bandar Road, Village :
Malonde, Taluka: Vasai – 421 303.
- 3. Collector, Palghar**
Office at : Collector Office,
Palghar, Chintupada Road, HDIL.
Paradise city, Phase – I, Palghar
- 4. Municipal Corporation of City of Vasai Virar**
Office at : Virar (E), Mumbai – 401 202
- 5. Jayendra Laxman Vartak**
Age: 63 years, Occ.: Agriculture;
- 6. Nitin Laman Vartak**
Age : 57 years, Occu.: Business;
Both residing at:
Dhovali – Mandlai, Sagarshet Road,
Taluka : Vasai – 401 207
- 7. Pradeep Bhavan Pathak**
| Age : 59 years, Occupation : Doctor
Residing at : Sagarshet, Dhovalil,

Near Hardale Vadi, Papdi, Vasai – 401 207

8. Mary Alex Carvalho

Age : 73 years, Occu.:Housewife,

9. Joy Alex Carvalho

Age:73 years, Occu.: Housewife,

10. Johnson Domnic Carvalho

Age : 51 years, Occu.: Carpentry
Respondent Nos. 8 to 10 residing at:
Khopvadi, Sagarshet, Papdi,
Vasai – 401 207

11. Clinton Gonsalves

Age:43 years, Occupation: Service,
Residing at:
Sagarshet, Dhovali, Near Hardale
Vadi, Papdi, Vasai - 401 207

Respondents

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- Mr. G. S. Godbole i./by Mr. Rahul Soman and Mr. Shon D. Gadgil for Petitioner
 - Mr. Atul G. Damle, Senior Advocate i./by Mr. Sarang Aradhye for Respondent Nos.7 to 11
 - Mrs. V. S. Nimbalkar, AGP for Respondent Nos.1 to 3
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CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 17, 2023

JUDGMENT:

1. By the present Writ Petition, Petitioner has prayed for the following reliefs :-

“a) Rule be issued; this Hon’ble Court may be pleased to call for the records and proceedings of Miscellaneous Civil Appeal No.139 of 2018 and after examining the legality, validity and propriety thereof, the Impugned Judgment and Order dated 20/04/2022 passed by the Ld. District Judge-I, Vasai (being Exhibit_____ to the Petition), be quashed and set aside;

c) Rule be issued; this Hon'ble Court may be pleased to call for the records and proceedings of Application below Exhibit 5 in Regular Civil Suit No. 74 of 2018 and after examining the legality, validity and propriety thereof, the Impugned Judgment and Order dated 30/10/2018 passed by the Ld. Civil Judge Senior Division, Vasai (being Exhibit 5 to the Petition), be quashed and set aside and the Application by the Petitioner under Exhibit 5 be allowed;"

2. Petitioner is appellant in Miscellaneous Civil Application No. 139 of 2018 filed by her challenging the order dated 30.10.2018 passed by the learned Civil Judge Senior Division, Vasai below Exh.5 in Regular Civil Suit. No 74 of 2018 instituted by her. There are two concurrent orders namely order dated 30.10.2018 and order dated 20.04.2020 against the Petitioner.

3. Respondent Nos.5 and 6 are brothers of the Petitioner, whereas the Respondent Nos.7 to 11 are the contesting Defendants in the civil suit before the learned Trial Court. Land of Respondent Nos.7 to 11 is adjacent to the land of Petitioner and Respondent Nos.5 and 6 in Vasai, District Palghar.

4. According to Petitioner, land bearing Survey No.76 Hissa No 5/2 (part) admeasuring 00H 9.4R and another portion in Survey No.76 admeasuring 00H 10.5R situated at Village – Dhovali, Taluka – Vasai District – Palghar is the suit property. Petitioner claims that suit property is ancestral property of the Petitioner and Respondents Nos.5 and 6 and they are in joint possession of the same. Petitioner has her

residential house on a portion of the suit property. Respondents Nos.7 to 11 are holders of the adjacent property. Dispute between the parties is with respect to a right of way / pathway going from East to West within Survey No.76, alongside the suit property.

5. Admittedly, there are/were several litigations between the parties pending before various authorities in respect of the disputed right of way. It would thus be apposite to describe the disputes between the parties before the statutory authorities before advertizing to the facts leading to filing of Regular Civil Suit No.74 of 2018 and passing of the impugned orders.

5.1. Facts pertaining to proceedings before the Mamlatdar and Tahsildar, Vasai:

(a) On 08.09.2004, one Mr. Jagannath Bhaskar Vartak not related to the Petitioner made an Application bearing No. Vahivat Dawa 4(a)/2004 was made before the Mamlatdar Court, Vasai under Section 5 of the Mamlatdar Court Act, 1906 in respect of the suit property. Petitioner was not made a party in the above proceedings. Respondent Nos.5 and 6 were impleaded as parties.

(b) By Order dated 05.03.2010, the learned Tahsildar allowed the Application and directed Respondent Nos.5

and 6 to immediately open the road / pathway which goes from the South to the North side and further not to create any obstacles to the villagers on the said road.

(c) On 27.09.2010, Appeal was preferred by Respondent Nos.5 and 6 which came to be dismissed vide Judgment and Order dated 27.09.2010.

(d) On 01.07.2011, Writ Petition No.9150 of 2010 was filed by the Respondent Nos.5 and 6 challenging the above dismissal Order, which was disposed by observing that the Petitioners would have to approach the competent Civil Court.

5.2. Facts leading to filing of Regular Civil Suit No. 77 of 2011 in the Civil Court:-

(a) In 2011 Petitioner and Respondent Nos.5 and 6 filed R.C.S.No.77 of 2011, *inter-alia*, seeking reliefs of declaration and permanent injunction in respect of the suit property.

(b) By Order dated 05.10.2012, the learned C.J.J.D., Vasai rejected Application under Exhibit 5 of the Petitioner / Respondent Nos.5 and 6 in the said suit.

- (c) Appeal bearing M.C.A. No.213 of 2012 was filed by Petitioner and Respondent Nos.5 and 6 which came to be dismissed by the Ld. District Court, Vasai vide Judgment and Order dated 30.07.2014.
- (d) On 18.06.2015, Writ Petition NO.7404 of 2014 filed by the Petitioner and Respondent Nos.5 and 6 was withdrawn with liberty to file a fresh Application for injunction before the Trial Court.
- (e) Suit No.77 of 2011 is pending before the Trial Court as on date.

5.3. Facts pertaining to proceedings for Mojni (Measurement):-

- (a) On 31.03.2009, Petitioner and Respondent Nos.5 and 6 filed Appeal bearing Kra.Na.Bhu.Appeal/S.R.1019/08/09 before the Superintendent, Land Records, Thane challenging the Pot Hissa Mojni (Measurement), which was carried out vide M.R.No.417/96 in the year 1996. The Appeal was dismissed vide Judgment and Order dated 31.03.2009.
- (b) On 25.04.2011, Petitioner and Respondent Nos.5 and 6 preferred an Appeal before the Deputy Director, Land Records, Thane challenging the above Order. The

Appeal was partly allowed and re-measurement was directed to be carried out.

- (c) On 13.02.2014, Respondent No.21 in the above Appeal, i.e. one Mr. Patrick Gonsalves preferred Revision before the Hon'ble Revenue Minister, Mantralaya which was dismissed vide Judgment and Order dated 13.02.2014.
- (d) On 28.03.2014, Writ Petition No.3178 of 2014 was filed by Mr. Gonsalves which came to be dismissed with a direction that re-measurement should be carried out in the presence of the Petitioner in the said Petition.
- (e) On 04.08.2020, Deputy Director, Land Records, Vasai carried out re-measurement as per the High Court Order and vide a Letter dated 04.08.2020 submitted his report, thereby stating that Mojni bearing M. R. No.1321 of 2019 was carried out on 10.04.2019 and the same had attained finality.

5.4. Facts leading to filing of the present Writ Petition No.6101 of 2014:-

- (a) On 12.04.2012, Respondent No.4 Corporation issued a Certificate stating that there was no public road situated in the subject property and from a perusal of

the 7/12 extract, it could be seen that the same was owned by Mr. Nitin Laxman Vartak.

- (b) On 16.01.2015, Respondent No.7 filed Writ Petition No.6101 of 2014 in this Court challenging the above Certificate granted by Respondent No.4 Corporation to the Petitioner. This Hon'ble Court disposed of the said Petition by holding that the certificate issued by the Corporation did not decide the rival claims regarding ownership of the road of either parties and the Corporation was not entitled to decide the title of the road by issuing the certificate.

5.5. Facts leading to filing of Regular Civil Suit No.74 of 2018:-

- (a) On 08.02.2018, Petitioner issued legal notice to the Sub-Inspector, Palghar bringing to his notice the illegal acts of Respondent No.7 and others whereby various trees standing on the property of the Petitioner were illegally destroyed by them and for which an F.I.R. was also lodged.
- (b) On 09.10.2018, Respondent No.6 i.e. the brother of the Petitioner was served with the notice by Respondent No.1 alleging that Petitioner and the Respondent Nos.5 and 6 had illegally reduced the width of the road from

12 ft. to 8 ft. by filling it up with stones and mud and that the same would be cleared on 14.10.2018 by taking help of police protection, if required.

- (c) On 10.10.2018, Regular Civil Suit No.74 of 2018 was filed by Petitioner challenging the notice dated 09.10.2018 issued by the Circle Officer, Manikpur and for other reliefs, including temporary injunction.
- (d) On 16.10.2018, Application was made by present Responded Nos.7 to 11 under Order I Rule 10(2) for impleading them as Defendants in the above suit.
- (e) On 19.10.2018, the above Application was allowed.
- (f) On 30.10.2018, Order was passed below Exhibit 5 whereby Application of Petitioner for temporary injunction was rejected.
- (g) In November, 2018 Appeal bearing No.139 of 2018 was preferred by Petitioner.
- (h) On 02.08.2018, Appeal filed by Petitioner was allowed vide Judgment and Order dated 02.08.2019.
- (i) On 19.09.2019, Writ Petition No.10284 of 2019 was filed by Respondent Nos.7 to 11 challenging the above Order.

- (j) On 15.02.2022, Writ Petition was allowed and the impugned Order dated 02.08.2019 was set aside and learned District Court was directed to hear the Appeal expeditiously, within a period of nine weeks.
- (k) On 20.04.2022, impugned Judgment and Order was passed by the learned District Judge – 1, Vasai dismissing the Appeal by the Petitioner.
- (l) On 02.07.2022, Affidavit-in-Reply was filed by Respondent No.7 in the above Petition, alleging, *inter alia*, suppression of earlier suit.
- (m) On 05.07.2022, Affidavit-in-Reply was filed by Respondent Nos.8 to 11 on similar grounds.
- (n) On 06.07.2022, Affidavit-in-Reply was filed by Respondent No.2 in the Petition.
- (o) On 07.12.2022, this Hon'ble Court (Coram: Hon'ble Shri Justice M.N. Jadhav) during the hearing, orally directed the AGP to ask the Tahsildar to conduct a site inspection and submit a report thereof to the Court of the actual status of the disputed road.
- (p) On 13.12.2022, side inspection was made and a panchanama was prepared alongwith a site map and

submitted to Court in sealed envelope. Court directed the contents to be shared with all parties and directed them to consider the same and file their replies thereto if necessary.

- (q) On 22.12.2022, Respondent No.7 filed additional Affidavit disputing the contents of the panchanama recorded in the inspection conducted on site on 13.12.2022 by the Tahsildar and Acting Circle Officer, Manikpur.
- (r) On 02.01.2023, Respondent No.2 filed Affidavit placing the site inspection conducted on 13.12.2022 and the panchanama on record in the present Writ Petition.
- (s) On 05.01.2023, Petitioner filed additional Affidavit in response to the site inspection conducted on 13.12.2022 thereby accepting the findings therein.

6. Mr. Godbole, learned Advocate appearing for the Petitioner would submit that Petitioner i.e. Plaintiff was not a party to the proceedings before the Mamalatdar Court and hence due to any orders passed therein, Petitioner's Application for injunction in the fresh suit instituted by her ought not to have been rejected by the learned Trial Court. He submitted that Petitioner has filed a fresh suit for declaration and permanent injunction in the trial court. He submitted

that both the learned Courts below have failed to take cognizance of the certificate issued by Respondent No.4 – Municipal Corporation declaring that there was no public road passing through the Petitioner's property. He submitted that the learned Trial Court has held that Petitioner is guilty of suppression of not disclosing the facts and reliefs prayed for in the previous suit filed by her and Respondent Nos.5 and 6 as she was not aware of the same. According to her she was not impleaded in the previous suit nor was impleaded in the proceeding before the Mamlatdar under the Mamlatdar Court Act, 1906. Hence in that view of the matter, Petitioner would not have knowledge about the previous suit proceedings even though she was in joint possession of the suit property with Respondent Nos.5 and 6 and this cannot be a cogent reason for denying interim relief. He submitted cause of action for filing Regular Civil Suit No.74 of 2018 has emanated on account of the impugned order dated 09.10.2018 which was a result of the proceedings between the parties pertaining to the suit property having culminated but without taking into cognizance that Petitioner was not a party to any of the previous proceedings. Hence in that view of the matter, Petitioner was entitled to interim relief. He submitted that in support of Petitioner's claim that there was no right of way / road / pathway in the suit property as claimed by the Respondent Nos.1 to 4 and 7 to 11. That Petitioner relied upon the fresh mojini map bearing M.R. No.1321 of 2019 which

showed that there was no road or pathway in the suit property. According to him, this material piece of documentary evidence ought to have weighed with the learned Trial Court, but the learned Trial Court has to the contrary held that it required evidence which is an erroneous finding.

6.1. He further submitted that Petitioner was served with a notice dated 24.05.2022 calling upon her to remove the obstacles / debris on the suit property, which if not prevented would frustrate the filing of the suit by the Petitioner. He submitted that since 30.05.2022, Petitioner is enjoying ad-interim relief which would now stand vacated in view of the twin impugned orders passed by the learned Trial Court and the Appellate Court if decided against her. He has heavily relied upon the sale deed of Respondent Nos.7 to 11, *inter alia*, pertaining to the year 1996 which does not disclose the existence of the road / pathway / right of way as claimed by the private Respondents. He has therefore prayed for setting aside of both the impugned orders passed by the learned Trial Court and the Appellate Court.

7. *PER-CONTRA*, Mr. Damle, learned Senior Advocate appearing for Respondent No.7 has opposed the Petition and made the following submissions:-

- i. that the impugned notice dated 09.10.2018 issued by the Circle Office to the Petitioner, which is the subject matter of the suit proceeding before the learned Trial Court has called upon the Petitioner to remove the encroachment made on the public road;
- ii. that the issue raised by the Petitioner stands already decided in Regular Civil Suit No.77 of 2011 which was filed by Respondent No.5 - Jayendra Laxman Vartak, Respondent No.6 - Nitin Laxman Vartak and Petitioner - Pushpa Vartak against the private Respondents claiming ownership of the suit property. He submitted that in that suit the Plaintiffs (including Petitioner) has sought a specific relief of injunction against the private Respondents not to use the subject road / pathway /public road which is the subject matter of the present case and by order dated 05.10.2012, the learned 3rd Joint Civil Judge rejected the application for temporary injunction filed by them. Further appeal before the appellate court against this order also came to be dismissed on 30.07.2014. Thereafter the Plaintiffs therein filed Writ Petition in this court which was ultimately withdrawn on the instructions of Nitin

Vartak the brother of Petitioner on 18.06.2015. Admittedly Regular Civil Suit No. 77 of 2011 is still pending before the learned Trial court. He submitted the aforementioned crucial facts have been suppressed by the Petitioner in the fresh Regular Civil Suit filed by her i.e. Regular Civil Suit No.74 of 2014. He submitted that the learned Trial Court has observed that Petitioner has suppressed these facts and therefore not entitled to any reliefs. That apart, he submitted that the learned Trial Court has also observed that Petitioner is the sister of Nitin Laxman Vartak who was the Plaintiff in the earlier suit. It is claimed in the present proceeding that Petitioner and Respondent No. 5 and 6 including Nitin Laxman Vartak are in joint possession of the suit property, and hence the Trial Court has declined injunction;

- iii. that the Sub-Divisional Officer, Bhiwandi has upheld the order dated 08.09.2004 passed by the Tahsildar, Vasai and directed the Petitioner not to obstruct the usage of the subject road / pathway / right of way and the said order has been confirmed up to this Court;
- iv. that it is contended by the Petitioner that she was not

party to the proceedings before the Mamlatdar Court and it is only her brothers who were parties therein which was not to her knowledge. To this he would submit that this court while disposing of the earlier Writ Petition in its order has categorically observed that any dispute with respect to whether the subject road is open to public or is a private road would be a matter to be determined by the competent civil court and cannot be agitated within the limited jurisdiction of this court in a Writ Petition. Therefore, in view thereof Petitioner including her two brothers (Respondent Nos.5 and 6) filed Regular Civil Suit No. 77 of 2011 and hence her non-impleadment in the Mamlatdar Court proceedings cannot be a ground for consideration to allow interim relief to her at this stage;

- v. He has heavily relied upon the order passed by the learned Tahsildar which was upheld by the Sub-Divisional Officer and also by this Court in Writ Petition No.9150 of 2010. According to him, the order of Tahsildar records that the subject road is 12 feet wide and passes through Survey No.75/3 and Survey No.76 leading to the house of Respondent No.7;

- vi. that in Regular Civil Suit No.77 of 2011 Petitioner i.e. original Plaintiff has claimed that the subject road is 12 feet wide whereas in the subsequent suit i.e. the present suit i.e. Regular Civil Suit No. 74 of 2018, the Petitioner now claims that the subject road was never having 12 feet width, but it is only 4 feet wide and used as a pathway by the villagers;
- vii. that it is the private Respondents case that Petitioner and her two brothers have demolished the existing compound walls and dumped the debris on one side of the subject road resultantly reducing the width of the road from 12 feet to 4 feet;
- viii. that the original order passed by the Tahsildar under the Mamlatdar Court Act, 1906 has remained unchallenged till date. The said order is a reasoned order and the findings given therein have attained finality.

7.1. In view of the above submissions, he has prayed for the dismissal.

8. I have heard Mr. Godbole, learned Advocate appearing for Petitioner and Mr. Damle, learned Senior Advocate for private Respondents and Mrs. V.S. Nimbalkar, learned AGP for Respondent

Nos.1 to 3 and with their able assistance perused the entire pleadings. Submissions made by the learned Advocates has received due consideration of the Court.

9. At the outset, it is seen that the fresh suit filed by Petitioner namely Suit No.74 of 2018 challenges the notice dated 09.10.2018 issued by the Circle Officer calling upon her to remove the obstruction on the road. Mr. Godbole has submitted that the said notice refers to the order of the Tahsildar dated 20.08.2018 and the findings returned by the learned Trial Court in paragraph Nos.12 and 13 of the order dated 30.10.2018 are based upon incorrect factual reasoning and should not be accepted. He submitted that there in another *prima facie* error committed by the Appellate Court in Paragraph No.40 of the order where it records that the order of the Tahsildar has attained finality. On these specific grounds, he has assailed the impugned orders. However, perusal of the record and pleadings indicate to the contrary. It is seen that though admittedly Petitioner was not a party before the Tahsildar in the Mamlatdar Court proceedings, however this cannot be a ground for the Petitioner to agitate that she was not aware of the same and cannot be held liable for any order passed therein. This is so because the said Mamlatdar Court proceedings ultimately culminated in the order dated 30.10.2018 passed by this Court in Writ Petition No.9150 of 2010. Pursuant thereto the Petitioner and her two

brothers on the basis of rejection order in the said Writ Petitions filed Regular Civil Suit No.77 of 2011. Hence the Petitioner's case on this ground fails. It needs to be stated here that Respondent Nos.5 and 6 and the Petitioner are all staying on the suit property since long as pleaded in the present Petition.

10. Next it is seen that when the Petitioner approached the learned Trial Court by filing the fresh Regular Civil Suit No.74 of 2018 to challenge notice dated 09.10.2018, she has conveniently suppressed all such information about the pendency of Regular Civil Suit No.77 of 2011, which is in respect of the same cause of action. Petitioner is therefore guilty of *supressio veri* and *suggestio falsi* in as much as admittedly on reading of the suit plaint of Regular Civil Suit No.74 of 2018 the same is evident. Petitioner failed to obtain any relief in the earlier suit proceedings i.e. Suit No.77 of 2011 and under the garb of challenging the impugned notice, by suppression of material facts, now cannot be permitted to agitate the same cause of action for the second time. Submissions advance by Mr. Godbole on the ground of inherent jurisdiction of the Court are therefore not acceptable, in such gross facts of the present case which are alluded to herein above and which are succinctly enumerated in the submissions made by Mr. Damle. The record is seen by me and speaks for itself.

11. Mr. Godbole has laid emphasis on the order dated 30.05.2022 passed by me sitting as the vacation bench granting ad-interim injunction to the Plaintiff in the present Writ Petition and submitted that the same should be continued. In the first place it needs to be noted that the order dated 30.05.2022 was not passed on merits of the case after hearing both the sides. The Petitioner approached this Court during the summer vacation agitating that the statutory Authorities would implement the impugned notice and remove the obstacles from the subject road which belonged to her and in that view the twin orders of rejection by the learned Trial Court and the learned Appellate Court were stayed and in those circumstances the order dated 30.05.2022 was passed. However now, after considering the Affidavit-in-Reply of the Respondents and perusing the pleadings and record the challenge to the impugned Orders as pleaded by the Petitioner fails miserably. Merely on the basis on one mojini map, the Petitioner cannot be entitled to seek injunction to substantiate her case that the subject road does not exist. There is overwhelming evidence which has been discussed and alluded herein above while narrating the disputes and facts hereinabove to show that there was a public road and the villagers were using the said road since prior to the year 2004. *Prima facie*, consideration of this evidence and various orders passed by the Civil Courts and also this Court clearly reveal that the Petitioner cannot say that she was

unaware of the actions defended by her two brothers before the Mamlatdar or this Court in respect of the same cause of action. That apart, the order of the Tahsildar in the Mamlatdar Court proceedings has attained finality and not been challenged by the Petitioner or any party. It is argued on behalf of Petitioner that ad-interim relief was continued for eight weeks when the Petitioner had maintained the challenge to the Sub-Divisional Officer's Order passed under section 23 of the Mamlatdar Courts Act in this Court and the said Writ Petition came to be dismissed. But it needs to be stated that Regular Civil Suit No.77 of 2011 was thereafter filed immediately and temporary injunction was refused. That the appeal was also dismissed. Further in the Writ Petition which was filed, the same was withdrawn with liberty to file a fresh injunction Application. It is therefore submitted that challenge in the present suit was maintainable afresh. However, perusal of the order of the withdrawal dated 18.06.2015 in Writ Petition No.7404 of 2014 shows that it was pleaded on behalf of the Petitioners that after passing of the impugned order by the learned District Judge dated 30.07.2014 there were subsequent developments and in view thereof the Petition was withdrawn on instructions of Petitioner (Respondent No.6) who was present in court with liberty to take out a fresh Application for injunction. Between June 2015 and the filing of the present suit by the Petitioner in year 2018, the fresh Application for injunction was never filed. Therefore, Petitioner now

cannot agitate the same issue by maintaining a challenge to the notice dated 09.10.2018 for the same cause of action. I have also considered the Affidavit-in-Reply filed by the Respondent No.2 dated 02.01.2023. It is now argued by Mr. Godbole that there is an alternate road available to the private Respondents to approach their property. On 16.12.2022 this Court heard the learned AGP pursuant to the oral directions given by this Court on 07.12.2022 to place on record the present status of the subject road. Learned AGP produced a communication dated 13.12.2022 alongwith panchanama and site report which was taken on record and directed to be given to both the parties. Mr. Godbole by virtue of his communication and the map (Rough Hand Sketch) prepared by the Tahsildar and annexed thereto has now submitted that the private Respondents cannot be prejudiced as the rough sketch showed availability of an alternate road to approach and have access to their property. Hence, they are not prejudiced and injunction should be continued. In the first place, I need to mention that instead of placing the status of the disputed / subject road, the Tahsildar has placed on record the hand sketch showing the alternate road which was not what was orally directed by this Court and most importantly which is not the subject matter of the *lis* between the parties. Hence Mr. Godbole cannot take advantage of the availability of the alternate road, when the dispute does not pertain to the same and is in fact pertaining to the subject road

running through the property of the Petitioner and up to the property of the private Respondents. I have taken cognizance of the affidavit filed by the Tahsildar. Annexed thereto is the panchanama. The panchanama proceeds on the basis of the statements of the Petitioner's family members that there is an alternate road available to the private Respondents. The Tahsildar was not supposed to furnish this position, but infact has overreached his authority and it clearly appears that he was influenced by the Petitioner's family in mentioning about the alternate road, when he was to inform the status of the disputed road. At this stage it is therefore stated that when this court had sought the present status of the subject road to enable this court to decide the issue in the present Writ Petition, the Tahsildar ought to have restricted the panchanama or his report or his drawing / sketch only in respect of the present status of the subject road and nothing more.

12. The only issue raised by Mr. Godbole is about a survey map which does not show the public road adjacent to the property of the Petitioner. However record indicates that there is a contradictory map placed by the private Respondents which shows presence of the road adjacent to the property of the Plaintiff. Undoubtedly both parties will have to prove the maps referred to and relied upon by them. However, merely on this ground Petitioner is not entitled to any relief as the facts discussed herein above clearly reveal that there are

substantive reasons and grounds in view of the earlier proceedings and orders which go against the Petitioner's case. I am in complete agreement and findings returned by the learned Appellate Court on the aforementioned grounds while upholding the order dated 30.10.2018 passed by the learned Trial Court rejecting the application for temporary injunction to the Petitioner. Both impugned Orders passed are reasoned Orders and do not call for any interference. Writ Petition therefore has to fail.

13. Writ Petition is dismissed.

14. At the request of Mr. Godbole the present order is stayed for a period of five weeks from today to enable the Petitioner to approach the Supreme Court.

[MILIND N. JADHAV, J.]

Digitally signed
by AJAY
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