

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL WRIT PETITION NO. 10458 OF 2022

Shobha Bhausaheb Bhalerao & Anr.

..Petitioners

Versus

The State of Maharashtra & Ors.

..Respondents

Mr. Narayan G. Rokade for Petitioners.

Smt. V. S. Nimbalkar, A.G.P for Respondent Nos.1 and 2.

Mr. Pankaj J. Das i/b. Deepak Devkar for Respondent No.3.

CORAM : SARANG V. KOTWAL, J.

DATE : 27 APRIL 2023

PC :

1. The Petitioners have challenged the order dated 19/01/2022 passed by Civil Judge, S.D., Niphad, below Exhibit-5 in R.C.S.No.258 of 2020. The Petitioners have also challenged the order dated 30/07/2022 passed by learned Extra Joint District Judge, Niphad in M.C.A.No.17 of 2022.

2. Heard Shri. Narayan Rokade, learned counsel for the Petitioners, Smt. Nimbalkar, learned A.G.P for the Respondent Nos.1 and 2 and Shri. Pankaj Das, learned counsel for the Respondent No.3.

3. The Petitioners are the original Plaintiffs in the R.C.S.No.258 of 2020. The Respondent No.3 herein is the contesting Respondent who had approached the Tahsildar under the Mamlatdars Court Act for removal of obstruction allegedly created by the Petitioners herein. The Tahsildar issued the order in favour of the Respondent No.3 herein and directed the Petitioners to remove the obstruction on the common way. The Petitioners filed suit before the Civil Judge, S.D., Niphad vide R.C.S.No.258 of 2020 with the prayers that the order passed by the Tahsildar in Case No.31 of 2020 be declared illegal and that it is not binding on the Petitioners-plaintiffs. Another prayer was for perpetual injunction against the Respondent No.3.

4. In that suit, the application at Exhibit-5 for the interim relief was filed by the Petitioners; which was rejected by the first impugned order. The said order was confirmed in the second impugned order passed by the Appellate Court.

5. Learned counsel for the Petitioners submitted that, when the Tahsildar passed his order, an opportunity of cross-examining

the witnesses was not offered to the Petitioners and, hence, there was violation of principles of natural justice. He submitted that the Respondent No.3 does not have any right over the road and, therefore, his application before the Tahsildar itself was not maintainable. He further submitted that, there is an alternate road available to the Respondent No.3.

6. Learned counsel for the Respondent No.3 relied on the orders passed by Tahsildar, the Trial Court, as well as, the Appellate Court. He submitted that, all these orders are well reasoned orders and they cannot be interfered with.

7. I have considered these submissions and I have perused all these impugned orders. The Tahsildar in his order dated 25/09/2020 passed in the Case No.31 of 2020 has observed that, on 30/07/2020 the inspection of the spot was conducted in presence of both the parties. During that inspection, it was seen that there was a road which was obstructed by the Petitioners herein by putting stones and sand on the road. The Petitioners claimed that, that road was their private road and it is meant for

accessing Gat No.2050/1. However, one Rajendra Bhalerao who was the owner of Gat No.2050/2 stated that the said road was in existence since much before and that the present Respondent No.3 was using that particular road. The Tahsildar relying on the inspection, granted relief to the Respondent No.3 and directed the Petitioners to remove the obstruction. After that the suit was filed.

8. Learned Trial Judge in his order dated 19/01/2022 observed that, as far as, rights of the parties are concerned, for that purpose, detail leading of evidence and consideration thereof is necessary. He further observed that, till the suit was decided the Petitioners herein would not suffer any irreparable harm if the Respondent No.3 was permitted to use that particular road. It was undisputed that the road was in existence.

9. Learned Appellate Judge also accepted this reasoning and added that, prima facie, the decision based on the report of the spot inspection clearly shows obstruction in the way. According to him, the Trial Court had rightly appreciated this fact and the Appeal was dismissed. Considering these orders and particularly

taking into consideration the inspection report, it is more than obvious that the access road was in existence. It was being used by the Respondent No.3 since before the obstruction was created by the Petitioners herein. Though, at this stage, no further conclusive finding can be recorded, but the balance of convenience and prima facie case is in favour of the Respondent No.3. Both the Courts i.e. the Trial Court and the Appellate Court have correctly appreciated these facts. In addition, the Tahsildar's order, as well as, the inspection report also support the case of the Respondent No.3. Therefore, I do not see any reason to interfere with the impugned orders.

10. The Petition is dismissed.

(SARANG V. KOTWAL, J.)