

Harish

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2692 OF 2023

Parvatibai Mahadu Ghule And Ors

...Petitioners

Versus

Vithal Damu Ghule And Ors

...Respondents

Mr. Sandeep Mishra for the Petitioners.

Mr. Pratik B. Rahade for the Respondents.

CORAM : SHARMILA U. DESHMUKH, J.

DATE : AUGUST 11, 2023

P. C. :

1. Heard.

2. The challenge in the Petition is to the order dated 15th December, 2022 passed in Misc. Civil Appeal No. 80 of 2022 rejecting the Appeal filed by the Petitioner and confirming the order of the Trial Court dated 5th November, 2022.

3. The facts of the case are that the Petitioners who are the Original Plaintiffs claim to be owners of the property bearing Survey No. 49 (part). Regular Civil Suit No. 682 of 2022 was instituted by the Petitioners challenging the order of the Tahsildar passed in Road Case No. 30 of

2022 and order of the Sub-Divisional officer passed in the stay Application in Revision Application No. 298 of 2022. The Tahsildar passed an order on 15th July, 2022 allowing the Application of the Respondent Nos. 1 to 44 under section 5(2) of the Mamlatdars Court Act, 1906 directing the Petitioner to remove the obstruction on the northern bandh to enable the Respondent Nos. 1 to 44 to access their respective plots.

4. In this proceeding, the application came to be filed under Exhibit-5 seeking temporary injunction restraining the Respondents from using the access way from the northern bandh of the Petitioner's property. The Trial Court by order dated 5th November, 2022 rejected the Application which findings was confirmed by the Appellate Court by its order dated 15th December, 2022 giving rise to the present Petition.

5. Heard Mr. Sandeep Mishra, learned counsel appearing for the Petitioners & Mr. Pratik B. Rahade, learned counsel appearing for the Respondents.

6. Learned counsel appearing for the Petitioners submit that the rejection of the Interim Application is based on the local inspection map of the Tahsildar and that there are no document produced on record to demonstrate that the Respondents were using the way from the northern

bandh of the Petitioner's property since last 20 years to access their property. He would further submit that he has placed on record the satellite maps to show the alternate way of access. He would further submit that in the absence of existence of any right of way, the injunction application ought to have been allowed.

7. *Per contra* learned counsel appearing for the Respondents submits that the order of the Tahsildar was passed after site inspection and it was observed that the access way of the Respondent Nos. 1 to 44 is through the northern bandh of the Survey No. 49 viz property of the Petitioner. He would further submit that it is the specific observation of the Tahsildar that after the measurement, the access road appears to have been obstructed.

8. Considered the submissions and perused the papers.

9. At the outset, it is to be noted that this Court has been called upon to exercise the power under Article 227 of the Constitution of India. In exercising powers under Article 227 of the Constitution of India, this Court is not expected to correct mere errors of law and fact. On record is the order of Tahsildar dated 15th July, 2022 which records that upon site inspection it is seen that the road existing on the northern bandh of Gat No. 49 has been destroyed. It also records that the occupants of Gat No.

49 have destroyed the boundary marks of Gat No. 49 as per the measurements and have included the area of access road in their Gat No. 49. To this report is annexed the site inspection map which is annexed at page No. 116 of the Petition.

10. The Trial Court observed that the Respondent-Defendants have brought on record the measurement map which discloses existence of way from northern side of Gat No. 49, which measurement was done at the instance of Plaintiff No. 6. The Trial Court considered that no material has been produced by plaintiffs to prove alternate access way for the Defendants. The Appellate Court has not interfered with the discretion exercised by Trial Court and has rejected the Appeal. In the present case, the Respondents have brought on record before the Trial Court the measurement map which disclosed the existing way from the northern bandh of Gat No. 49. The findings of the Trial Court and the Appellate Court do not demonstrate any material brought on record by the Petitioners to indicate that the Respondents had any alternate way of access. The reliance placed by the Petitioners on the satellite map has been rightly rejected by the Court. The Trial Court and the Appellate Court has based their observation on the measurement map which has been prepared by the Tahsildar and an order to that effect dated 15th July, 2022 has also been passed. Before this Court reliance has been placed satellite

map and there is no material produced to demonstrate an alternate right of way to the defendants. There is no reason of doubt the findings of the Tahsildar and the measurement map. In my view, considering the concurrent findings there is no warrant for interference. Petition fails and is dismissed.

11. At this stage the request is made for extension of the order of status quo for a period of two weeks which is opposed by learned counsel appearing for the Respondents. Considering that the order of status quo was operating in favour of the Respondents, the order is stayed for further period of two weeks from the date of uploading of the order.

(SHARMILA U. DESHMUKH, J.)