

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Writ Petition No.825/2021

Shreeram and others V State of Mah. and others

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

Mr. K.P. Sadavarte, Adv. for petitioners.
Mr. R.S. Kavimandan, Adv. for resp. nos.4 and 5.
Mr. Adil Mirza, Adv. for resp. no.6.
Mr. N.R. Patil, AGP for resp. nos.1 and 2.

CORAM : AVINASH G GHAROTE, J.
DATE : 03-01-2023

Heard Mr. Sadavarte, learned counsel for
the petitioners.

2. The petition challenges the order below Exh- 5 (pg 93) dated 18-09-2020, whereby the learned trial Court rejected the application for grant of injunction and so also the judgment dated 14-01-2021 (pg 120), dismissing the appeal there against.

3. It is the contention of learned Counsel for the petitioners that there is no road in existence for approach to the land of Gat Nos.48 and 49 from the land of Gat Nos. 89, 90 and 91 and therefore the rejection by the Courts below is in correct. He places reliance upon the Village Map (page 16) to substantiate this position.

4. Mr. Kavimandan, learned Counsel for respondent nos. 3, 4 and legal heirs of respondent no.5 and Mr. Adil Mirza, learned Counsel for respondent no.6, support the impugned order by contending that the learned Mamlatdar in proceedings under Sec. 5 of the Mamlatdar's Court Act, 1906 (for short, 'of the Act, 1906') has already found the existence of the road and hence directed for removal of the obstruction created to the same and therefore the impugned orders do not suffer from any infirmity.

5. The petitioners who are the plaintiffs in RCS No.27/2020 had challenged the order dated 27-06-2020 of the learned Mamlatdar passed under Sec.5 of the Act, 1906, holding the existence of the road passing through the lands of Gat Nos.89, 90 and 91 for approach to the lands of Gat Nos.48 and 49 by way of filing the aforesaid suit. In the said suit, the application for injunction at Exh 5 came to be rejected and so also the said appeal. It is necessary to note that before the Mamlatdar, a spot inspection was directed, which was conducted on 30-11-2019 in the presence of the petitioners, in pursuance to which, map was prepared (pg 26) which indicated the existence of road from Gat Nos.89, 90 and 91 to approach the lands of Gat Nos. 48 and 49. It is on the basis of this map, that the learned Mamlatdar by the order dated 02-07-2020 (pg 34) allowed the application u/s 5 and directed

removal of the obstruction created to the passage. It is material to note that though the spot inspection panchanama is dated 30-11-2019 and was placed on record in proceedings under Sec. 5 of the Act, 1906, along with the map at page 26 till 27-06-2020 the decision of the application under Section 5, no objection whatsoever was raised by the present petitioners either to the spot inspection panchanama or the map filed on record. Contentions contrary would be something which would require evidence to be led.

6. It has also come on record by virtue of pursis dated 08-02-2021 (page 170) that the road has since been opened up and made available for the passage, considering which, I am not inclined to interfere in the concurrent findings of fact. The petition is therefore without any merit and accordingly it is dismissed. No costs.

JUDGE