



**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

WRIT PETITION NO. 632 OF 2024

Chhagan s/o. Sarjerao Garad,
Age 76 yrs, Occu. Agri.,
R/o. Chinchpur (Kh), Tal. Paranda,
Dist. Osmanabad.

....Petitioner

Versus

1. The State of Maharashtra,
Through Collector,
Collector Office, Osmanabad.
2. Tahsildar,
Tahsil Office, Paranda,
Tal. Paranda, Dist. Osmanabad.
3. Executive Engineer,
Maharashtra Rural Development Institute,
Chief Minister, Pradhan Mantri Gramsada Sadak Yojna,
Amalbajawani Pathak Karyalaya, Behind Z.P. Shopping
Center, Near City Police Station,
Tal. & Dist. Osmanabad.

....Respondents

...
Mr. Sandeep Y. Mahajan, Advocate for petitioner.
Mr. V.M. Chate, AGP for respondents.
...

CORAM : ARUN R. PEDNEKER, J.
Dated : 06/02/2024

ORDER :

1. By the present writ petition, the petitioner is challenging the judgment and order dated 2.1.2024 passed by the learned District Judge-1, Paranda in Misc. Civil Appeal No. 42/2023, which was filed against the order on temporary injunction application, Exh. 5, in R.C.S. No. 15/2023. The temporary injunction application was allowed by the trial court and the same was set aside by the impugned judgment and order of the appellate Court.

2. The facts of the case of the petitioner can be summarized as under :-

Petitioner is the original plaintiff, who has filed R.C.S.No. 15/2023 in the Court of Civil Judge, Senior Division, Paranda against the present respondents/defendants i.e. State of Maharashtra and its authorities, seeking declaration of ownership and perpetual injunction over the suit property. It is the case of the plaintiff that he is the owner and possessor of the suit property bearing Gat No. 371, admeasuring 2 H. 69 R. land situated at village Chinchpur, Taluka Paranda, District Osmanabad. The defendants are constructing Chinchpur Manik Nagar rural road from the north portion adjoining to the boundary of the suit property. There is house of plaintiff in north-east corner of the suit property. So also there is a well in the northern portion of the suit property. It is submitted that there is no rural way through the suit property, however, without acquiring any portion of the suit property, the defendants are illegally trying to construct rural road through the northern portion of the suit property and an attempt is made to dispossess the plaintiff from the northern portion of the suit property. As such, the plaintiff was constrained to file suit for temporary injunction restraining defendants or anybody claiming through them from obstructing the peaceful possession of the plaintiff over the suit property.

3. After the suit summons were issued, defendants/respondents herein appeared in the suit and filed their written statement and denied all the contentions raised by the plaintiff in the suit. The respondents submits that there is Chinchpur-Manik Nagar Rural road and the said road is owned by Zilla Parishad Construction Department and the construction work of the

said road is sanctioned under 'Pradhan Mantri Gram Sadak Yojana'. The defendants contended that the said road is in existence since long and defendants are not making any illegal construction and prayed for dismissal of the suit.

4. After hearing both sides and considering the documentary evidence placed by both the sides, on 5.9.2023 the trial Court allowed the application below Exh. 5 filed by the present petitioner and temporarily restrained the respondents/defendants from interfering in the peaceful possession of the plaintiff over the suit property.

5. Being aggrieved and dissatisfied by the order dated 5.9.2023 passed by the trial Court below Exh. 5 in R.C.S. No. 15/2023, defendants preferred Misc. Civil Appeal No. 42/2023 before the District Court. District Court, by its impugned order dated 2.1.2024 allowed the appeal of the respondents. Hence, the same is challenged by filing the present writ petition by the plaintiff/petitioner.

6. Mr. Mahajan, learned counsel for the petitioner has taken me through the judgment and order of the appellate court and draw my attention to the points and its findings rendered by the appellate court, which are as under :-

Sr. No.	Points	Findings
1)	Whether plaintiff has established prima-facie ... case in his favour ?	Yes.
2)	Whether balance of convenience lies in favour of ...	No.

plaintiff ?

- | | | | |
|----|---|-----|---------------------|
| 3) | Whether plaintiff has established that, in case of refusal of injunction irreparable loss will be caused to him ? | ... | Yes. |
| 4) | Whether impugned order is legal and proper ? | ... | No. |
| 5) | Whether impugned order calls for interference ? | ... | Yes. |
| 6) | What order ? | ... | As per final order. |

7. The learned counsel for the petitioner has further taken me through para No. 13 and submitted that panchanama dated 10.4.2023 was prepared in presence of Dy. S.L.R., Paranda and witnesses. Both the parties relied upon the panchanama dated 10.4.2023 and the panchanama reveals that the road passes through Gat No. 381 for some distance and through the boundary of Gat No. 381 and 371 for some distance. The learned counsel submits that the road passes through the boundary upon Gat No. 381 and not from the property of the petitioner i.e. Gat No. 371. The learned counsel has shown me the map which is at page No. 54 of this writ petition to contend that the village map shows that road is passing through the property of Gat No. 381 and not from the property of the petitioner i.e. Gat No. 371. The learned counsel submits that the portion of the property owned by the plaintiff i.e. Gat No. 371 is taken over by the respondent authorities without acquisition of the same and as such, he prayed to direct the respondents/State authorities to either acquire the portion of land from Gat No. 371 of plaintiff and thereafter, only permit the respondents to construct the road through the petitioner's land.

8. Per contra, Mr. V.M. Chate, learned A.G.P. appearing for the

respondents/State authorities has filed an affidavit and has submitted that the petitioner had filed an application under section 5 of the Mamlatdar Courts Act, 1906 to the Tahsildar, Paranda, contending that some of the person have obstruction road which is in existence to use for the land Gat No. 371, 372, 373, 375 and 376 and in the said proceedings, the learned Tahsildar Paranda passed the order confirming that the road is in existence for use of Gat Nos. 376, 371, 372, 373 and 381. The learned AGP submits that the petitioner himself has got measured the land from D.S.L.R. Office, Paranda for confirmation of the road passing through the lands Gat Nos. 371 and 381. The map prepared by the Deputy Superintendent of Land Records, Paranda is also produced on the record. The learned AGP submits that no new road is prepared and that existing road is developed.

9. Considered the rival submissions and perused the documents, more particularly, the map produced and also the order passed by the Tahsildar, Paranda. The findings as regards the existence of pathway is rendered by the appellate Court at para No. 14. The relevant portion is as under :-

"14The existing way is through the common boundary of land Gat No. 381 and 371. Under such circumstance, at this stage, it cannot be said that defendants are changing the route of the way while developing rural road."

The findings of the appellate Court is that the existing way is through the common boundary of lands Gat Nos. 381 and 371 and it cannot be said that defendants are changing the route of the way by developing the road.

10. The evidence produced on record shows that there is road in

existence for long period of time and the said road is shown in the map which is passing through the boundary of Gat Nos. 371 and 381 and the petitioner has also moved an application under Mamlatdar Courts Act for removal of obstruction from the said road. Thus, it cannot be said that there is no road in existence towards northern side, in between Gat Nos. 371 and 381. As such, the appellate court has rightly refused the injunction against the plaintiff as the existence of the road is prima facie established by the respondents/State authorities and the same is upgraded under the Pradhan Mantri Gram Sadak Yojna. Thus, the appellate court has rightly quashed and set aside the impugned order below Exh. 5 in R.C.S. No. 15/2023 passed by the learned Jt. Civil Judge, Senior Division, Paranda. I see no error in the order of the appellate Court, refusing the injunction. No case is made out for interference in the writ jurisdiction of this Court.

11. In the result, the order passed by the appellate court is upheld and the writ petition is dismissed. However, in the event, the petitioner ultimately succeeds in the suit and it is found that any part of the land of the plaintiff which was occupied or taken over by the defendants/State authorities for construction of road without acquiring the same, the petitioner would be entitled for compensation or any other relief as may be available in law.

[ARUN R. PEDNEKER J.]

SSC/