



**IN THE JUDICATURE OF HIGH COURT AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 10223 OF 2022

Chagan s/o Manku Badgujar,

...Petitioner

VERSUS

1. Bhagwan s/o Gajanan Badgujar,
2. Bhushan s/o Bhagwan Badgujar,
3. Narendra s/o Bhagwan Badgujar,
4. Chandrakalabai w/o Bhagwan Badgujar,
5. The State of Maharashtra
Through Dist. Collector, Jalgaon. **...Respondents.**

...

Advocate for the Petitioner : Mr. M. L. Sangit

AGP for Respondents-State : Mr. Mr. B. A. Shinde

Advocate for Respondent No.1:Mr.A.E. Madne h/f Mr. Ajeet B. Kale

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CORAM : R. M. JOSHI, J.

Reserved for Order on : 04/07/2024
Pronounced on : 08/07/2024

ORDER :-

1. This petition takes exception to orders passed below Exhibit 6 and 31 in Regular Civil Suit No.217/2021 dated 18/10/2021 which has been confirmed by the District Judge-1, Jalgaon in Misc. Civil Appeal No.49/2021 by order dated 26/07/2022.

2. The facts which led to the filing of present petition can be narrated in short as under : -

Petitioner is defendant No.1 in Regular civil Suit No.217/2021., who had filed an application before Tahsildar, Erandol for seeking way to his agricultural land in Rasta Case No.19/2018. Said application was partly

allowed by Tahsildar whereby approach road from bandh of Gut No.35, 36, 37 and 40 was granted. The petitioner/ defendant No.1 being aggrieved by the said order, preferred appeal before Sub-Divisional Officer claiming that the said land owners are not party to the proceeding and easy and accessible road is available from bandh of Gut No.49 belonging to respondent/ plaintiff. The said appeal was dismissed. Against the said dismissal, further appeal came to be filed before Collector, who by order dated 07/09/2020 allowed the appeal and remanded the matter to the Tahsildar for fresh inquiry. On remand, Tahsildar passed order dated 01/02/2021 allowing the application and granted approach road from bandh of Gut No.49. The appeal filed by the respondent/ plaintiff before Sub-Divisional Officer and Collector came to be rejected. Respondent Nos.1 to 4 therefore filed suit bearing Regular Civil Suit No.217/2021 against the order dated 11/08/2021 passed by Tahsildar granting approach road through Gut No.49. An application below Exhibit 6 was moved for stay of impugned order. Whereas, petitioner/ defendant moved application Exhibit 31 for seeking injunction against the plaintiff not to obstruct him from use of the way granted by the Tahsildar. By common order passed below Exhibit 6 and 31, application Exhibit 6 came to be allowed whereas Exhibit 31 is rejected. Defendant Nos.1 and 2 were

restrained from entering into the Block No.49/1 to Block No.49/4 as well as creating road from block No.49/1 to 49/4 as per order passed by Tahsildar, Erandol in Vahivat Case No.13/2020, dated 01/02/2021 till final decision of the suit. This order was unsuccessfully challenged before the District Court, hence this petition.

3. Learned Counsel for the petitioner submits that the Trial Court as well as Appellate Court have committed serious error of misinterpretation of the provisions of Section 143 of Maharashtra Land Revenue Code (MLRC) and also order passed by Tahsildar by holding that the order passed by Tahsildar is not for providing road over boundary/ bandh but same is beside the boundary which is not permissible. He also drew attention of the Court to the panchanama drawn by Tahsildar indicating that the said order of granting of way has been implemented on 14/09/2021. To support his submissions apart from panchanama, photographs were also relied upon. According to him, by suppression of the said material fact, order is obtained from the Court. It is his submission that the order passed by the Trial Court is stayed by this Court on 07/10/2022, and hence, after lapse of period of two years, there is no propriety in challenging the said order.

4. Learned Counsel for respondents/ plaintiffs vehemently opposed the said submission by pointing out that the suit was filed before 14/09/2021, and hence, there is no question of any suppression of facts being done by the plaintiffs. According to him, both Courts below have dealt with the case sought to be made out of execution of order on 14/09/2021 and is rightly rejected. It is submitted that in the first proceeding for way, Tahsildar had directed the way to be granted from Gut No.35, 36, 37 and 40. Said order was interfered with by the Appellate Authority only for the reason that the owners of the suit lands were not heard. It is his submission that in such circumstances without recording any finding as to reason for not joining them as a party and then to pass order, Tahsildar has committed error in granting road from Gut No.49. By referring to Section 143 of the MLR Code it is submitted that if at all any way is to be granted owing to the needs of the cultivator for reasonable access to their field, such way would be over the boundaries of the other survey numbers and not from any other part of the land than the boundaries thereof. It is submitted that the Tahsildar in this case has granted way beyond boundary, hence such order is not tenable. On these contentions, he support the impugned orders.

5. There is no dispute with regard to the fact that initially when the petitioner approached to Tahsildar for way to Gut No.49/4, he was granted way from bandh/ boundary of Gut No.35, 36, 37 and 40. This order was set aside only for the reason that the owners of these lands were not party to the proceedings. Once Tahsildar had come to the conclusion that the way was available for the petitioner through these gut numbers, before issuance of any direction to provide way from Gut No.49, there ought to have been findings recorded by the Tahsildar at least on the point of feasibility of the way from the aforestated gut numbers, except distance.

6. As far as to the exercise of powers by Tahsildar under Section 143 of MLR Code is concerned, Sub-section (1) of Section 143 provides that Tahsildar may inquire into and decide claims by persons holding land in a survey number to a right of way over the boundaries of other survey numbers. As rightly argued on behalf of the respondents, the power of the Tahsildar to grant way would be restricted to the position over the boundaries of the other survey numbers and not through any other portion of land including portion abutting to the boundary. In the instant case, the order passed by the Tahsildar clearly shows that the way is granted abutting to

bandh of Gut No.49. The learned Trial Court has reproduced the said order in paragraph No.31 and from the order impugned prima facie it needs to be held that the way has been granted not over the boundaries but from the land to the aside of boundary. Owing to provisions of Section 143 of the MLR Code, the observations made by Trial Court, regarding want of power of Tahsildar to do so, cannot be prima facie called perverse.

7. With regard to the submission of the petitioner that the order passed by Tahsildar is already executed on 14/09/2021, and therefore, question of stay of the said order does not arises. It is material to note that panchanama dated 14/09/2021 itself records that there was water channel having five to six feet deep water and there being standing cotton crop in the field. It further records, request being made seeking some time for removal of the said crop for execution of the order. There is no material on record to indicate that after 14/09/2021, at any time actual work of creation of road/way was undertaken in compliance of order of Tahsildar. Having regard to the facts as they appear from record, finding recorded by the Trial Court as well as Appellate Court being in consonance with

the material on record cannot be termed as perverse, to call interference therein.

8. Merely because this Court in the year 2022 by way of interim relief has stayed impugned orders, the same would not become a ground for continuation thereof. Having regard to the aforestated discussion, this Court finds no reason or justification to cause interference in the impugned orders.

9. As a result of above discussion, petition stands dismissed.

(R. M. JOSHI, J.)

vj gawade/-.