



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

903 WRIT PETITION NO. 208 OF 2024

SUMAN SHIVAJI RAHANE
VERSUS
THE COLLECTOR KOPARGAON AND OTHERS

Mr. Mukul S. Kulkarni, Advocate for the petitioner
Mr. S. N. Kendre, AGP for the respondent/State
Mr. V. S. Bedre, Advocate for respondent no.4

CORAM : R. M. JOSHI, J.

DATE : 27th NOVEMBER, 2024

PER COURT :-

1. This petition takes exception to the order of rejection on Exhibit 5 in R.C.S. No. 205 of 2023 which came to be filed challenging the order passed below Section 5 of the Mamlatdars' Courts Act (for short 'the Act'). This order was taken exception in Misc. Civil Appeal No. 54 of 2023 unsuccessfully.

2. There is no dispute about the fact that the petitioner is co-owner of Gut No. 542 situated at Bahadarpur, Tal. Kopergaon, Dist. Ahmednagar. Respondent no.4 initiated proceedings under Section 5 of the Act as according to him an obstruction was caused to the way by respondent no.6 Balasaheb. Tahsildar heard the said proceedings and passed order in favour of respondent no.4 dated 18th July, 2023. A revision was filed by Balasaheb before Authority against the said order.

Revisional Authority rejected the application filed by Balasaheb. Balasaheb moved application for stay of the order passed by Tahsildar in this proceeding. Order dated 11th August, 2023 rejected the said application. He, however, directed present petitioner to be made as a party with further observation that the order passed by Tahsildar would bind her.

3. Present petitioner filed suit bearing R.C.S. No. 205/2023 taking exception to the order passed by the Tahsildar. An application vide Exhibit 5 came to be moved for seeking injunction that on the basis of order dated 18/07/2023 passed in Rasta Case No. 1336/2022, no new road would be constructed from the land belonging to the petitioner. This application came to be rejected by the Trial Court so also, the appeal filed against the said order was not entertained.

4. Learned counsel for the petitioner submits that since admittedly, the petitioner was not party to the Rasta Case No. 1336/2022, any order passed therein would not bind her. It is his submission that though Balasaheb was party to the said proceeding, the petitioner is not claiming any right through Balasaheb but she is claiming independent right as a co-owner of the subject property.

5. Learned counsel for the respondent has not disputed the fact

that the petitioner was not party to the proceeding. However, it is his contention that since the order was against co-owner, the same would bind against the petitioner. He also apprehends that if the stay is granted, the petitioner as well as respondent no.5 would take disadvantage of the same and the order passed by the Tahsildar be get trusted.

6. As there is no dispute about the fact that the petitioner was not party to the Rasta Case No. 1336/2022 and since she is not claiming any right through Balasaheb who was a party, on the face of it the said order would not bind her. Though, there is no challenge to the order passed by the revisional Court in this proceeding, this Court, however, finds it necessary to take note of the said order and observations made therein for limited purpose. Apparently said Authority committed error by holding that the order which was passed in absence of the petitioner would bind her. These aspects were not considered by the Trial Court as well as the Appellate Court.

7. From the above facts it is clear that the order passed in Rasta Case No. 1336/2022 would not bind the petitioner in absence of she being heard before passing of the order, the petitioner is entitled for injunction in this regard. This Court, however, is not inclined to pass order the manner in which the injunction is sought in the suit. The

respondent no.4 and the authorities are restrained from implementing the order passed by the Tahsildar against the petitioner no.1 only and it can be executed against Respondent nos.2 to 6 as well as other parties to the Rasta Case No. 1336/2022.

8. Having regard to the fact of this is a case for removal of alleged obstruction under Section 5 of the Act endeavor shall be made by the authorities/ Court to decide the proceedings expeditiously.

(R. M. JOSHI, J.)

ssp