

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 15991 OF 2023

Prasad Dileep Desale

.. Petitioner

Versus

Collector and Dist. Magistrate & Ors.

.. Respondents

.....

- Mr. Narayan Bubna for Petitioner
- Mr. V.G. Badgujar, AGP for Respondent Nos. 1 & 2
- Mr. Hrishikesh Sopan Shinde for Respondent No. 3

.....

CORAM : MILIND N. JADHAV, J.

DATE : APRIL 18, 2024

P. C.:

1. Heard Mr. Bubna, learned Advocate for Petitioner; Mr. Shinde, learned Advocate for Respondent No. 3 and Mr. Badgujar, learned Advocate for Respondent Nos. 1 and 2.

2. Present Writ Petition takes exception to the order dated 06.12.2023 passed by the learned District Court while upsetting Exh. 5 order passed by the learned Trial Court in a Suit filed by the Plaintiff challenging Section 5 order in Revenue Wahivat Case No. 16/2023.

3. Mr. Bubna would submit that it is the contention of the Petitioner (Org. Plaintiff) that Defendant Nos. 3 to 6 who are the owners of Gat No. 148 have been allowed the right of way i.e. vahivat through Gat No. 159 and 160 so as to have an approach upto the Defendants' agricultural land. He would submit that a substantive

challenge is maintained to Section 5 order passed by the learned Tahsildar in the Trial Court by filing a Suit. He would next submit that Defendant Nos. 3 to 6 who are the owners of Gat No. 148 already have two approach roads upto their agricultural field in Gat No. 148. In that view of the matter, Mr. Bubna would submit that the order dated 20.11.2023 passed by the learned Trial Court in Exh. 5 proceedings has been correctly passed.

4. With the able assistance of Mr. Bubna, I have perused the order dated 20.11.2023. By virtue of that order, the execution of the order of Tahsildar in Revenue Case No. 16/2023 is stayed till decision of the Suit. Mr. Bubna would submit that in view of two alternate approach roads available to the Defendants, the stay order should continue. He is aggrieved by the District Court's order.

5. *PER CONTRA*, Mr. Shinde, learned Advocate for Respondent No. 3 would submit that the learned District Court while reversing the order of Exh. 5 has referred to a panchnama prepared by the Mamlatdar which finds mention in paragraph No. 9 of the said order holding that it is apparent from the panchnama as well as the Village map that there was a right of way to Gat No. 148 through Gat Nos. 159 and 160. In that view of the matter, learned District Court has reversed the order below Exh. 5.

6. It is seen that the Suit is filed in the year 2023. By virtue of the Section 5 order passed by the Tahsildar dated 03.10.2023, Defendants will have to be provided a right way of way through Gat Nos. 159 and 160 so as to have an approach to their agricultural land in Gat No. 148. Though Mr. Bubna would submit and argue that Gat No. 148 has two clear approaches in the alternative, however on the basis of a permanent Dhura i.e. boundary, on perusing the Village map placed before me by both the parties, it is seen that both those approaches are through five different Gat numbers on either side on Gat No. 148. What is seen is pegmarks only and not a road. It may be precisely because of this reason, that the learned Tahsildar has passed order dated 03.10.2023 in the Revenue case filed by Respondents / Defendants. The question as to whether there was existence of Dhura through Gat Nos. 159 and 160 so as to have an approach upto Gat No. 148 is now the subject matter of challenge in the Suit filed by the Plaintiff. Evidence will ultimately determine that challenge. According to Respondent No. 3, they have been using the approach road through Gat Nos. 159 and 160 since long.

7. Rival contentions are raised by the Plaintiff as also Defendant No. 3. In that view of the matter and after perusing the Village map placed before me which is taken on record and marked "X" for identification and in view of the above observations, Defendant Nos. 3

is permitted to use the vahivat road through Gat Nos. 159 and 160 subject to the decision in Special Civil Suit No. 580/2023. It is further directed that Defendant No.3 to 6 shall not exceed the area required to have the approach to their agricultural field through Gat Nos. 159 and 160 and shall not criss-cross through Gat Nos. 159 and 160. The approach to Gat No. 148 till pendency of SCS No. 580/2023 shall be strictly along the dividing line between Gat Nos. 159 and 160 on one side and Gat No. 161 on the other side. In case if the Defendants transgress this direction given by the Court during the interregnum, liberty to the Petitioner / Plaintiff to approach this Court for vacating this order. Defendant Nos. 3 to 6 are directed by this Court to ensure that the cultivation activity of the Plaintiff in Gat No. 160 as also in Gat No. 159 to whomsoever it may belong shall not in any manner be disturbed by these Defendants. Needless to state that the present arrangement does not give an imprimatur of this Court of having confirmed or upheld the order dated 03.10.2023 passed by the Tahsildar in Revenue Case No. 16/2023. Rights of parties shall be determined in the Suit proceedings.

8. It is directed that Special Civil Suit No. 580/2023 shall ultimately govern the rights of the parties in so far as the said approach road is concerned. Learned Trial Court is directed to determine SCS No. 580/2023 as expeditiously as possible. Considering

the peculiar facts in the present case, the order of expedition of the Suit is therefore necessary. I am informed that the pleadings are completed in the present Suit. In that view of the matter, both parties shall along with a server copy of this order appear before the learned Trial Court on 22.04.2024 at 11:00 a.m. along with copy of their draft issues and place the same before the learned Trial Court. Learned Trial Court is requested and directed by this Court to determine the issues between the parties at its discretion and commence the trial as per its convenience. It is clarified that if there is any attempt on the part of Defendants to protract the trial, Plaintiff shall be at liberty to move this Court and seek vacating of this order.

9. With the above directions, the impugned order dated 06.12.2023 is sustained.

10. Writ Petition is disposed.

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[MILIND N. JADHAV, J.]

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by RAVINDRA
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