



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR
Writ Petition No.5379 of 2023

Vasudeo Hiranman Pradhan and anr. vs. Prakash Mahadeo Munde and ors.

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri A.A. Jamadar, Advocate for the Petitioner/s
Shri Dhore, Advocate for the respondent Nos.1 to 6
Shri Harshal Futane, AGP for the Respondent No.7/State

CORAM : ANIL S. KILOR, J.
DATE : 10.04.2024

1. Heard.
2. In this petition, the application for grant of temporary injunction moved by the petitioners/plaintiffs, came to be rejected by 6th Joint Civil Judge Senior Division, Akola vide order below Exh.5 dated 09.05.2022. The same was carried in the appeal before the learned First Appellate Court vide Misc. Civil Appeal No.76 of 2022. The learned First Appellate Court vide judgment and order dated 17.07.2023 dismissed the appeal. Hence, this writ petition.
3. On perusal of the record, it is evident that in a proceeding filed under Section 5 of the Mamlatdars' Courts Act, 1906 (for short "the Act of 1906") before the Tahsildar, a spot inspection was carried out and in the said spot inspection, it was noticed that a right of way claimed by the respondent No.1 to 6 is in existence and accordingly, the application under Section 5 of the Act of 1906 was allowed.

4. It is pertinent to note here that in the reply filed by the petitioners to the proceeding under Section 5 of the Act of 1906, they made a request to carry out spot inspection to verify the claim made by the respondent Nos.1 to 6. Accordingly, when the spot inspection was carried out, the record shows that the petitioners were present, but they refused to sign the spot inspection report. The spot inspection report supports the case of the respondent Nos.1 to 6 and that was the basis for the Tahsildar to allow the application under Section 5 of the Act of 1906, directing the petitioners not to obstruct the approach way of the respondent Nos.1 to 6.

5. The learned counsel for the petitioners submits that the Order of the Tahsildar is erroneous on the ground that, in the 7/12 extract nowhere such approach way is shown in the column 'Other Right'. He further submits that even in the sale deeds of the petitioners as well as the respondents, there is no mention of such approach way. He further argues that the affidavits filed on record of the adjacent field owners, support the case of the petitioners. He therefore, submits that the order of the Tahsildar is erroneous and consequently the order passed by the trial Court and the First Appellant Court, relying upon the such order and denying the grant of temporary injunction, is contrary to the law.

6. I do not find favour with the submission of the learned counsel for the petitioners for the reason that, the affidavit of the adjacent owners filed on record by the petitioners, cannot be relied upon, unless they are cross-examined. Furthermore,

merely there is no mention of approach way either in the sale deed of the petitioners or in the sale deeds of the respondents, would not falsify the spot inspection. As far as the 7/12 extract is concerned, even if there is no mention of approach road in the column 'Other Right', it cannot be held that no approach way is available for the respondent No.1 to 6 from the field of the petitioners.

7. If the argument of the petitioners is accepted that because there is no approach way shown in the 7/12 extract, no approach way is available to the respondents, in that case, even there is no mention of any alternate way available to the respondents and therefore, it cannot be held that there is no approach way available to the respondents to approach their fields from the field of the petitioners.

8. Hence, after going through the reasons recorded by both the Courts below in denying the temporary injunction to the petitioners, I am of the opinion that no perversity or illegality committed by both the Courts below. Accordingly, since there is no merit in the present writ petition, the writ petition is **dismissed**.

[ANIL S. KILOR, J.]