



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH: NAGPUR
WRIT PETITION NO.64 OF 2024**

Harish S. Panjwani ...Petitioner
Versus
Gopichand G. Balwani & Ors. ...Respondents

Mr. P.S. Chawhan for the Petitioner.
Mr. A.C. Dharmadhikari for the Respondent Nos.1 to 3.

CORAM : N. R. BORKAR, J.
DATE : 24 JULY 2024.

PC:-

1. This petition takes exception to the order dated 14.12.2023 passed by the Principal District Judge, Bhandara in Miscellaneous Civil Appeal No. 48 of 2023.

2. The petitioner is a defendant in a suit filed by the respondents for declaration, mandatory and prohibitory injunction. The prayers in the suit are as follows:

"1. It may be declared that plaintiffs have acquired customary easementary right to approach disputed land from ring road, through disputed way, as shown in plaint map.

2. It may be declared that construction of defendant on portion of disputed public road in an area of 40.50 m² (450 ft²); as shown by red colour in plaint map, affecting the right of way as well as customary easementary right to disputed land of plaintiffs, is illegal and unauthorised.

3. Consequently, by passing decree of mandatory injunction, defendant may be directed to demolish entire construction on an area of 40.50 m² (450 ft²) of disputed road, and to restore position of public road, so as to have hurdle less ingress and egress on disputed land from disputed way.

4. *It may be ordered (in case mandatory temporary injunction as prayed is not granted) that if defendant fails to comply with the decree of mandatory injunction within period of a month from the date of decree, the obstruction caused by defendant by way of construction will be removed at the cost of defendant.*

5. *After the demolition of construction, owing to the decree of mandatory injunction, defendant, his agents, successors, servants or anybody claiming through him may permanently be restrained from obstructing right of way of plaintiffs from disputed way to reach disputed land, by making construction or by any other manner.*

6. *Cost of the suit may be saddled on defendant.*

7. *Any other relief deems fit in the circumstances may be granted in favour of plaintiffs."*

3. By order dated 30.10.2023, pursuant to the application filed by the respondents, the trial Court directed the present petitioner to demolish the entire construction on the disputed road. By the order impugned, the appeal filed by the petitioner against the order of trial Court came to be dismissed.

4. I have heard the learned counsel for the petitioner and learned counsel for the contesting respondents.

5. The trial Court on the basis of documents filed by the parties on record has recorded the finding that the disputed road is public road. Due to construction of wall by the petitioner on disputed road, the respondents would not be able

to approach to their field and would not be able to cultivate their field. The submission of the learned counsel for the petitioner is that disputed road is not a public road. However, it is well settled that while exercising the jurisdiction under Article 227 of the Constitution of India, the finding of fact cannot be interfered with. The petition is dismissed.

6. Pending Application(s), if any, are disposed of.

(N.R. BORKAR, J.)