

VRJ

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.6339 OF 2023

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Ramdas Mahadev Waghmode & Ors. ... Petitioners

V/s.

Sayaji Popat Kachare & Anr. ... Respondents

Mr. Shashank Mangale i/by Mr. Satish S. Raut for the petitioners.

Mr. Vishwanath S. Talkute for the respondents.

CORAM : AMIT BORKAR, J.

DATED : JANUARY 20, 2025

P.C.:

1. The petitioners, as original plaintiffs, instituted a suit seeking a declaration that the order passed by the Tahsildar under Section 143 of the Maharashtra Land Revenue Code, 1866, is ultra vires, without jurisdiction, illegal, and not binding on them. In addition, they sought a permanent injunction to restrain the defendants from creating a road through the suit property, which is in their lawful possession. The petitioners also filed an application for temporary injunction under Order XXXIX Rules 1 and 2 of the Civil Procedure Code, 1908, to restrain the defendants from forcibly creating the road through the suit property by taking police assistance. The Trial Court allowed the temporary injunction application upon considering prima facie case, balance of

convenience, and irreparable loss in favor of the petitioners. However, the Appellate Court, in appeal under Order XLIII Rule 1 of the Civil Procedure Code, 1908, allowed the respondents' appeal, thereby rejecting the petitioners' temporary injunction application.

2. The learned advocate for the respondents has placed on record an application filed by the respondents, accompanied by a Panchnama and supporting evidence, indicating that the road has already been made available and constructed. Consequently, the primary relief sought in the petitioners' temporary injunction application under Order XXXIX Rules 1 and 2 has become infructuous, rendering the application academic at this stage.

3. Notwithstanding the above, it is clarified that the petitioners retain their right under Order XXXIX Rule 4 of the Civil Procedure Code, 1908, to apply for modifying injunction order if they successfully demonstrate to the Trial Court the existence of new facts. Such an application, if filed, shall be considered on its own merits and in accordance with law, without being influenced by observations made in this judgment.

4. Considering the nature of the dispute and the potential impact on the rights of the parties, the Trial Court is directed to expedite the hearing and disposal of the suit and conclude the proceedings within six months from the date of this order. The Trial Court shall ensure adherence to the principles of natural justice and provide both parties with an adequate opportunity to present their case.

5. The writ petition stands disposed of in above terms. No costs.

6. It is further clarified that the observations made by the Appellate Court in its impugned order pertain only to the interlocutory stage and shall not prejudice or influence the Trial Court while adjudicating the suit on its merits. The Trial Court shall decide the suit independently, based solely on the evidence and arguments presented before it.

(AMIT BORKAR, J.)