

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.12823 OF 2023

Sabir Abdul Gani Khan

...Petitioner

vs.

Vijay Ramchandra Shinde

...Respondent

VISHAL
SUBHASH
PAREKAR

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Mr. S.G. Kudle, for the Petitioner.

Mr. Rushikesh Kharat, for Respondent.

CORAM : N. J. JAMADAR, J.

DATE : MARCH 04, 2025

ORAL ORDER

1. Rule. Rule made returnable forthwith. With the consent of the learned counsel for the parties, heard finally.

2. The challenge in this petition is to a judgment and order dated 3rd October, 2023 passed by the learned District Judge, Barshi whereby the appeal preferred by the petitioner in MCA No. 38 of 2023 against the order passed by the learned Civil Judge, Karmala in RCS No. 140 of 2022 came to be dismissed affirming the said order rejecting the application preferred by the petitioner for temporary injunction.

3. The Tahsildar, Karmala passed an order on 21st March, 2022, under section 143 of the Maharashtra Land Revenue Code, 1966 (the Code, 1966) and directed that the respondent- defendant be provided right of way over the boundaries of other survey numbers

to approach the land of the defendant bearing Gat Nos. 70/1. The said order was corrected by a further order dated 12th May, 2022 incorporating Gat No. 76/1, which belongs to the petitioner-plaintiff.

4. The petitioner thus instituted a suit being RCS No. 140 of 2022 seeking a declaration that the said order passed by the Tahsildar was illegal and void and the consequential relief of restraining the defendants from causing obstruction to the possession of the plaintiff and creating a way over Gat No. 76/1 (the suit property).

5. In the said suit, the petitioner filed an application for temporary injunction. By an order dated 24th March, 2023, the learned Civil Judge was persuaded to reject the application. The learned Civil Judge was of the view that the plaintiff had failed to make out a *prima facie* case and the balance of the convenience tilted in favour of the petitioner. In the event, the temporary injunction was not granted, the defendant would suffer greater hardship.

6. Being aggrieved, the petitioner preferred an appeal before the learned District Judge at Barshi. By the impugned order, the learned District Judge was persuaded to dismiss the appeal. The learned District Judge concurred with the view of the trial Court that, *prima facie*, there was no case cart-way for the defendant to

approach his field.

7. Mr. Kudle, the learned counsel for the petitioner, submitted that both the Courts below have committed an error in recording a *prima facie* finding that there was no alternate way to the defendant. In fact, on the said point framed for determination, in the order dated 21st March, 2022, the Tahsildar had recorded a negative finding. However, in the later part of the order, it was recorded that the defendant has no alternate access. The existence of the alternate way is beyond cavil. The defendant was required to establish that he had an easement of way. In the absence of such proof, the learned District Judge as well as the trial Court committed error in rejecting the application for temporary injunction, urged Mr. Kudle.

8. In opposition to this, the learned counsel for the respondent submitted that the easementary right of way and right to claim way over boundaries under section 143 of the Code, 1966 are distinct. It is not necessary to establish easement to claim right of way under section 143 of the Code, 1966. To buttress this submission, the learned counsel placed reliance on a judgment of this Court in the case of **Pandurang Chandrabhan Bauche and Anr. vs. Jalindhar Sarandhar Tupe and Ors.**¹ wherein it was enunciated that section 143 of the Code confers an independent right on an owner of an

1 2009(3) Mh.L.J. 467.

agricultural land to claim a right of way for having reasonable access to his field. That right is not dependent upon proof of an easement, whether by way of necessity or by way of prescription as provided under the Easements Act.

9. Having perused the order passed by the trial Court and the learned District Judge, this Court does not find any justifiable reasons to interfere with the concurrent *prima facie* findings recorded by the Courts below. A copy of the spot inspection report (page 21) clearly records that the defendant has no alternate way to approach Gat No. 70/1 and 70/1/A. The Tahsildar in the order dated 21st March, 2022 has categorically recorded that the defendant has no way to reach his field, beyond Gat No. 73. Thus, the Tahsildar granted right of cart-way over the east-west boundaries of Gat No.74/5, 74/1, 75/3 and 76/3; the petitioner's land. The fact that the petitioner's land was subsequently inserted does not make much difference as there is reference to the said land in the order dated 21st March, 2022. The petitioner was a party to the said proceeding. Thus, the order passed by the Tahsildar *prima facie* does not suffer from such jurisdictional error or defect in procedure as to warrant an interim order by the Civil Court in the suit instituted to declare the said order illegal and void.

10. In any event, both the Courts below have recorded findings on

the basis of objective material. Such findings are not open for interference in exercise of limited supervisory jurisdiction. Thus, the petition deserves to be dismissed.

Hence the following order.

ORDER

1] The petition stands dismissed.

2] Rule discharged.

3] No costs.

(N. J. JAMADAR, J.)

At this stage, the learned counsel for the petitioner, seeks continuation of stay granted by this Court by an order dated 19th October, 2023.

As the stay is in operation since 19th October, 2023, the same shall remain in operation for a period of six weeks.

(N. J. JAMADAR, J.)