



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL WRIT PETITION (ST) NO. 17888 OF 2024
WITH
CIVIL WRIT PETITION (ST) NO. 17889 OF 2024

Vasantrao Sampatrao Nalavade .. Petitioner
Versus
District Collector, Satara & 14 Ors. .. Respondents

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- Mr. Nikhil Wadikar a/w Mr. Pradip Zende, Aniket Gole i/b Mr. Nandu Pawar, Advocate for Petitioner
 - Mr. Vishwajeet Kapse a/w Mr. Shailesh Chavan, Mr. Akshay Mane, Mr. Dhairyashil Phadtare, Advocate for Respondent Nos. 4 to 6
 - Ms. Aloka A. Nadkarni, AGP, for Respondent Nos. 1 to 3 - State.

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CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 02, 2025

JUDGMENT:

1. These two Writ Petitions take exception to the twin orders, both dated 21.06.2024 passed by learned District Court i.e. Appellate Court in Miscellaneous Civil Appeal (for short “MCA”) Nos.48 of 2024 and 50 of 2024 whereby common order dated 08.04.2024 passed below Exhibit-5 and Exhibit-45 by learned Trial Court is upset. Both impugned orders are absolutely identical, passed in two separate MCAs.

2. Parties shall be referred to as “Plaintiffs” and “Defendants” for convenience.

3. Petitioner in both Petitions viz; Writ Petition (Stamp) No.17888 of 2024 and Writ Petition (Stamp) No.17889 of 2024 is Plaintiff No.1 and Respondent Nos.7 to 15 are Plaintiff Nos.2 to 10, whereas Respondents Nos.1 to 6 are Defendant Nos.1 to 6. Plaintiffs are admittedly owners of Gat Nos. 708, 709, 710 and 711. Aligning on the west side boundary of these Gat numbers is a vahivat road which joins the main road. This vahivat road is used for ingress and egress by Plaintiffs as private road.

4. Plaintiffs filed the present Suit seeking injunction against Defendant Nos.4 to 6. Additionally, Plaintiffs sought injunction against Defendant Nos.1 to 3 who are the Collector, Satara, Sub-Divisional Officer (for short "**SDO**") Satara, and Assistant Director, Town Planning (for short "**ADTP**") Satara from granting NA permission to Defendant Nos.4 to 6 in respect of the aforementioned vahivat road. Suit is filed on 24.04.2023 as Regular Civil Suit (for short "**RCS**") No.271 of 2023 alongwith Exhibit-5 Injunction Application. After filing of Suit by order dated 27.06.2023 Defendant No.2 – SDO granted NA permission to Defendant Nos.4 to 6 in respect of the vahivat road. Plaintiffs therefore amended the Suit proceeding to challenge order dated 27.06.2023 and additionally filed fresh application below Exhibit "45" for seeking temporary injunction.

5. Learned Trial Court heard the Exhibit “5” Application alongwith Exhibit “45” together on its merits and passed common order dated 08.04.2024, allowing both Applications, resultantly granting injunction against Defendant Nos.1 to 6 until decision in the Suit proceedings.

6. Being aggrieved by the above order, Defendant Nos.5 and 6 filed Miscellaneous Civil Appeal No.48 of 2024 and Defendant No.4 separately filed Miscellaneous Civil Appeal No.50 of 2024 to challenge the said common order. By the impugned orders, learned District Court allowed both Miscellaneous Civil Appeals and reversed the injunction order. Hence Plaintiff No.1 has filed the present Writ Petitions. Plaintiff Nos. 2 to 10 are supporting the Plaintiff No.1.

7. By order dated 29.06.2024, this Court granted *status quo* and permitted parties to complete pleadings. Both sides persuaded the Court to hear the Petition finally. By consent Petitions are heard finally.

8. Common injunction order dated 08.04.2024 passed by Trial Court is appended as Exhibit “F” at page No.98 of Petition. Separate impugned orders dated 21.06.2024 passed by District Court in MCA are appended as Exhibit “O” at page No.184 separately in both Petitions. Dispute between parties is ascertained from contents of Annexure “A” – plan in the Suit plaint. Both learned Advocates have

referred to and relied upon the proposed layout plan to air their grievances. They would submit that the said plan be used as reference by Court. Precursor to the above dispute between the parties is use of the subject vahivat road.

9. In so far as ownership of the plots of land is concerned, there is no dispute. Admittedly, Plaintiffs are owners of Gat Nos.708, 709, 710 and 711, where as Defendant Nos.4 to 6 are owners of Gat Nos. 720/1 and 720/2, from where the vahivat road originates and passes along the western side boundary of the agricultural fields at Gat Nos. 708 to 711. The aforesaid position can be easily visualized as depicted on the map placed before Court. Question raised is about the right to use the said road.

10. Mr. Wadikar, learned Advocate for Plaintiff No.1 who is the Petitioner before me, would submit that Plaintiffs are permanent residents of village Vadhe and agriculturists by occupation. Their case is that the aforementioned Gat Nos.708 to 711 are situated on the eastern boundary of the said vahivat road. Plaintiffs' case is that they have constructed their residential houses on their respective agricultural fields and are residing therein. Plaintiffs' further case is that towards the western side of their agricultural fields, all Plaintiffs have kept a road like space having about 7 to 8 ft. of width for their ingress and egress upto the main road which is exclusively used by

Plaintiffs. According to Plaintiffs, Gat No.720 lies at the southern terminal end of this vahivat road. The northern end joins the main road. Few days prior to filing of Suit, Gat Nos.720/1 and 720/2 came to be sold to three (3) different persons. Defendant Nos.4, 5, 6 are new owners / purchasers of sub-divided Gat Nos.720/1 and 720/2. After Defendant Nos.4 to 6 became owners of the above sub-divided Gat No.720, they submitted Application for seeking conversion to non-agricultural use and construction permission. Gat No.720/3 belongs to the ownership of one Ms. Vrushali Patil and she has already been granted conversion permission to NA and construction permission.

10.1. According to Plaintiff No.1, if Defendant Nos.4 to 6 are granted permission for construction and conversion to NA, they apprehend that their right of use of the said vahivat road would be transgressed. It is Plaintiffs' case that the said vahivat road has been recognized by the local Gram Panchayat for exclusive use of Plaintiffs for ingress and egress of their bullockcarts, tractors and transport vehicles from the agricultural fields. Mr. Wadikar would vehemently submit that the said vahivat road is shown as public road in the record maintained by the local Gram Panchayat; that it is used for ingress and egress exclusively by Plaintiffs since times immemorial and most importantly Defendant No. 3 – ADTP in his opinion dated 02.06.2023 has on the basis of material evidence, opined that no access road

through the vahivat road is available to Gat No.720 belonging to Defendant Nos.4 to 6 and Ms. Patil. Ms. Patil is not a party to the Suit proceedings.

10.2. Briefly stated, Defendant Nos.4 to 6 claim the said vahivat road as public road having access upto original Gat No.720, whereas it is Plaintiffs' case that the said vahivat road is exclusively used as private road by the Plaintiffs for their ingress and egress. This is the dispute. Mr. Wadikar would submit that in view of the opinion expressed by Defendant No.3 ADTP on 02.06.2023, an order dated 27.06.2023 came to be passed by Defendant No.2 – SDO granting NA permission to Defendant Nos.4 to 6, despite pendency of the Suit proceeding. He would fairly submit that there was no injunction order passed at that time.

11. As against the aforesaid submissions of Plaintiffs, Mr. Kapse, learned Advocate for Defendant Nos.4 to 6 would submit that it is undisputed that Defendant Nos.4 to 6 are owners of Gat Nos.720/1 and 720/2 situated at village Vadhe, Taluka and District Satara. He would submit that by Mutation Entry No.9607 Gat No.720 came to be divided into three (3) parts namely 720/1 in the name of Defendant No.4, 720/2 in the names of Defendant Nos.5 and 6 and 720/3 in the name of Ms. Vrushali Patil. He would submit that owner of Gat No.720/3, Ms. Vrushali Patil obtained NA order dated 04.06.2005

from SDO, Satara allowing access to the vahivat road leading to her land i.e. 720/3. The said NA order dated 04.06.2005 is annexed at page No.4 of the compilation of documents submitted by Defendant Nos.4 to 6. This position is undisputed.

11.1. He would draw my attention to the same order appended at page No.125 of the Writ Petition and would contend that once the aforesaid order is in subsistence from 04.06.2005 in respect of the holding of Ms. Vrushali Patil, there is no reason to deny the same order in respect of sub-divided Gat Nos.720/1, 720/2. He would submit that NA order of SDO dated 04.06.2005 has not been challenged by Plaintiffs till today. Hence, they cannot maintain challenge and seek injunction against the Defendants Nos.4 to 6 in the said proceedings. Rather he would submit that the Suit is not maintainable.

11.2. He would submit that the said vahivat road is infact for the benefit of Defendant Nos.4, 5 and 6 and Ms. Vrushali Patil to have access to their respective Gat Nos.720/1, 720/2 and 720/3. He would submit that when Defendant Nos.4 to 6 filed Application for NA order, SDO heard objections of Plaintiffs and only after hearing the same and carrying out inspection through the Tahasildar, passed order dated 27.06.2023 concluding that the said vahivat road is an internal connecting road available to the original Gat No.720. He would

submit that initially Defendant No.3 ADTP had opined that in view of old records, the access road was not to be seen, therefore SDO directed the Tahasildar to physically visit the site for verification of the factual position about availability of the access road and place his report.

11.3. He would submit that Report of Tahasildar dated 02.06.2023 states that he along with Circle Officer and Talathi visited the said vahivat road and it opines that on the eastern side of Gat No.711 upto the western side of Gat No.720, the access road is in existence. It is further stated in his report that the said vahivat road is used for public purpose and its entry is duly recorded in Form No.23 of the Gram Panchayat record at serial No.6 and it is nomenclatured as Gram Panchayat road. He would submit that time and again, repeatedly the local Gram Panchayat has maintained the said vahivat road by asphaltting the said road by using public funds. In support of the above two factual propositions, Mr. Kapse would draw my attention to SDO's letter dated 22.06.2023 and Gram Panchayat record / register appended at page Nos.118 and 145 of the Writ Petition. He would submit that Defendant No.2 – SDO granted NA permission dated 27.06.2023 to Defendant Nos.4 to 6 by relying on the public record and opined that the said disputed vahivat road is in existence

for the use of Gat No.720 as public road by annexing a map to scale in that regard.

11.4. He would submit that Plaintiffs have stated in the Suit plaint that they are using the said vahivat road as their private access which itself proves that the said vahivat road does exist. He would submit that the said vahivat road is the only access available to Gat No.720 and its sub-divided three areas and to the contrary Plaintiffs' Gat No.708, 709, 710 and 711 have a separate / alternate access on the eastern side of those Gat numbers. He would submit that Defendant Nos.4 to 6 are owners of Gat Nos.720/1 and 720/2 and Ms. Vrushali Patil is owner of Gat No.720/3 and they have the right to use the said vahivat road and Plaintiffs have no right to claim ownership thereto. He would submit that Plaintiffs cannot claim ownership of the said vahivat road due to their long use and have no legal right to object grant of NA permission to owners of sub-divided Gat Nos.720/1, 720/2 and 720/3. Rather Plaintiffs have not objected or challenged the NA permission given in respect of Gat No.720/3 way back in 2005. He would draw my attention to the definition of "street" under Section 2(21) of the Maharashtra Village Panchayats Act, 1959 and also Sections 56 and 57 thereof. For immediate reference, Sections 2(21), 56 and 57 are reproduced below:-

“2(21) - “street” means any road, footway, square, court, alley or passage accessible whether permanently or temporarily to the public, whether a thorough fare or not.

56. (1) It shall be competent for a Zilla Parishad from time to time to direct that any property vesting in it shall vest in a panchayat and on such direction being issued, the property shall, subject to rules made in that behalf, vest in the panchayat notwithstanding anything contained in the Transfer of Property Act, 1882, or the Indian Registration Act, 1908 :

Provided that no lease, sale or other transfer of any such immovable property by the panchayat shall be valid without the previous sanction of the Chief Executive Officer.

(2) Every work constructed by a panchayat out of the village fund, or with Government assistance or peoples’ participation shall vest in such panchayat and every work constructed by a panchayat with the assistance of Zilla Parishad or Panchayat Samiti shall vest in a panchayat in the manner provided by rules made in that behalf.

57. (1) There shall be in each village a fund, which shall be called the village fund.

(2) The following shall be paid into, and form part of, the village fund, namely :—

(a) the amount which may be allotted to the village fund by the State Government under the provisions of section 191 of the Bombay District Municipal Act 1901; or under section 8 of the Central Provinces and Berar Municipalities Act, 1922;

(b) the proceeds of any tax or fee imposed under section 124 except the general water rate and the special water rate levied under clauses (viii) and (xii), respectively, of sub-section (1) of that section ;

(c) the proceeds of a tax on professions, trades, callings and employments assigned to the panchayat 7 under clause (b) of section 163 of the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961;

(d) the sum representing the share of the panchayat in the net proceeds of the taxes, duties, tolls and fees levied by the State as distributed and allocated and determined by the State Government on the recommendations of the Finance Commission;

(e) all other sums ordered by a court to be placed to the credit of the village fund;

(f) the sale proceeds of all dust, dirt, dung, refuse or carcasses of animals,

except so far as any person is entitled to the whole or a portion thereof ;

(fa) the sale proceeds or royalty of the minor forest produce collected in the Scheduled Areas within the jurisdiction of a panchayat and vested in that panchayat ;

(g) sums contributed to the village fund by the State Government or a Zilla Parishad or Panchayat Samiti;

(h) all sums received by way of loans from the State Government or the Zilla Parishad or out of the District Village Development Fund constituted under section 133 3[and all sums borrowed under section 57A;

(i) all sums received by way of gift or contributions by the panchayat ;

(j) the income or proceeds of any property vesting in the panchayat ;

[* * * *]*

(l) the net proceeds (after deducting the expenses of assessment and collection) of the cess authorised by section 127 ;

(m) all sums realised by way of rent or penalty otherwise than as the amount of any fine in a criminal case ;

(n) all sums received as pound fees after deducting the expenses ;

(o) all sums received by way of commission by a panchayat, when acting as an insurance agent for implementing any rural Insurance Scheme of the Life Insurance Corporation of India.

(3) The Secretary and the Sarpanch shall be jointly responsible for the safe custody of the village fund, the Village Water Supply Fund and other moneys received on behalf of the panchayat, from time to time, and shall jointly operate them for the following purposes], namely :—

(a) authorisation of payments, issue of cheques and refunds in compliance with the provisions of this Act and the rules made thereunder or the resolutions, duly passed by the panchayat ;

(b) receive all sums of money on behalf of the panchayat in response to notices, bills, appeals and other processes issued by the panchayat;

(c) issue of receipts in the prescribed manner for all sums of money received on behalf of the panchayat and crediting them in the relevant fund;

(d) hold cash imprest on hand, of not more than one hundred and fifty at a time, for contingent purpose of the panchayat;

(e) incur contingent expenditure upto one hundred rupees] at any occasion;

(f) for performing such other duties and exercising such other powers in regard to the funds as may be prescribed.

(4) The Secretary shall submit a weekly statement of accounts to the panchayat and a monthly statement of account to the Block Development Officer, giving in particular the details of the receipts into and payments from and the balance in the funds.”

11.5. On the basis of the above statutory provisions, he would submit that the said vahivat road vests with the local Gram Panchayat in the manner provided by the Rules framed under the statute. He would submit that in the present case, admittedly public funds have been used which are provided by Government for maintenance of the said vahivat road and therefore Plaintiffs cannot claim ownership by prescription or long use in their favour and on that basis claim injunction. He would submit that if Plaintiffs are aggrieved by the order dated 27.06.2023, their remedy would lie to file an appropriate statutory Appeal against that order before the appropriate Authority under Schedule “E” of the Maharashtra Land Revenue Code, 1966. The fundamental point which Mr. Kapse would vehemently argue is that Plaintiffs have to assert their legal title in respect of the said vahivat road in order to seek relief of injunction and in the present case, there is no such assertion of title, rather he would submit that in

the present case there is assumption of title for the said vahivat road on the basis of prescription. Hence, if that be the case then Plaintiffs have failed to perfect their title.

11.6. He would submit that the said vahivat road which is the subject matter of the Suit belongs to the owners of sub-divided Gat Nos.720/1, 720/2 and 720/3 exclusively. He would submit that this is the point of distinction which has been considered by the learned District Court while overturning the Exhibit “5” order dated 08.04.2024 passed by the Trial Court. He would submit that the learned Trial Court has on the basis of a singular letter addressed by Defendant No.3- ADTP, wrongly concluded that Plaintiffs have ownership right alongwith right of access on the said vahivat road and therefore injunction was granted. Plaintiffs admittedly have no ownership status of the said vahivat road, which is actually a public road. He would submit that Trial Court’s order would render subdivided Gat Nos.720/1, 720/2 and 720/3 virtually landlocked and without access and it is this incorrect and wrong finding that is corrected and overturned by the District Court’s order. He would vehemently submit that apart from the said vahivat road providing access to Gat Nos.720/1, 720/2 and 720/3, there is no other access available and therefore until the Suit is decided, Defendant Nos.4 to 6 will have to be allowed to use the said vahivat road and allowed NA

permission for development of their Gat Numbers. Hence, on the basis of *prima facie* evidence, balance of convenience and irreparable harm to Defendant Nos.4 to 6, the order by District Court in MCA has been correctly passed with respect to the dispute between parties *qua* the status of the said vahivat road and therefore the order deserves to be upheld. He would submit that without a trial, Plaintiffs cannot assume absolute ownership of the said vahivat road which is admittedly shown in the Gram Panchayat record as 'paved and asphalted road' being used for many years by public and most importantly public funds having been used for maintenance of the said road. He would submit that in the plaint Plaintiffs have not pleaded legal and juridical title to the said vahivat road. Hence, he would urge the Court to uphold both the orders dated 26.03.2024 passed by the District Court and dismiss the present Writ Petitions.

12. I have heard Mr. Wadikar, learned Advocate for Plaintiff No.1 and Mr. Kapse, learned Advocate for Defendant Nos.4 to 6 and the learned AGP and with their able assistance perused the record and pleadings of the case. Submissions made by the learned Advocates have received due consideration of the Court.

13. In the present case, it is seen that the 'Suit property' described in the Suit plaint is the said 'vahivat road' but on reading paragraph No.1, it appears that it is in conjunction with Plaintiff Nos.

1 to 10's Gat Nos.708 to 711. What is stated while describing the Suit property is that the 'vahivat road' is not in existence, in fact it has been curated by Plaintiffs for their personal use for ingress and egress.

14. In support of Plaintiffs' case they are relying upon Exhibit "A" to the Suit plaint and two principal reliefs prayed for in the Suit are for injunction. Injunction can be prayed for by a party against its opponents in respect of immovable property only when the party seeking injunction is the owner of the property or has a legal right to occupy and use the same.

15. *Prima facie* case of Plaintiffs for entitlement and use of the said vahivat road, is only on account of prescription and long use and nothing more. As opposed to this Defendant Nos.4 to 6 are owners of Gat Nos.720/1 and 720/2 and they have for their access the said vahivat road running from north to south joining up to their respective properties / Gat Numbers.

16. At the outset, it is seen that the said vahivat road traverses from Satara-Patkhal Road along the boundaries of Gat Nos. 708, 709, 710 and 711 which are on the eastern side of the road and Gat Nos.712 and 728 which are on the western side of the said vahivat road. The road goes right up to and touches the original Gat No.720. It is seen that Gat No.711 is adjacent to Gat No.720. From Annexure

“A” to the Suit plaint, it is seen that Plaintiffs who are owners of Gat Nos.708 to 711 claim exclusive right over the said vahivat road in its entirety which is clearly visualized from the said Annexure.

17. In the above background facts pleaded by Plaintiffs and substantial material placed on record by both parties in form of additional documents appended below Exhibit “57” and Exhibit “73” and pleadings apart from the correspondence with Defendant Nos.1 to 3, status of the said vahivat road will have to be *prima facie* ascertained by this Court to decide the injunction order. Both the parties are unrelenting at this stage due to passing of the order dated 27.06.2023 granting NA status in favour of Defendant Nos.4 to 6 and have vehemently contested these petitions, in view of Plaintiffs apprehending that their right to use the said vahivat road will now be obstructed by Defendant Nos.4 to 6. Admittedly, the said vahivat road was available to the original Gat No.720 as access road from the Satara-Patkhal main road. It is seen that original Survey No.720 which is a much larger area is subdivided into Gat Nos.720/1, 720/2 and 720/3. There are three (3) different owners of the above Gat Numbers. Owner of Gat No.720/3, Ms. Vrushali Patil, applied for permission under Section 44(1) of the Maharashtra Land Revenue Code,1966 on 18.01.2005/31.01.2005. SDO called for remarks and reports of Tahasildar on the said Application by his letter dated

02.02.2005. In reply to this letter, the Tahasildar Satara furnished his report along with all relevant documents appended and annexed thereto running into 61 pages, opining and certifying that NA permission for Gat No.720/3 can be granted as requested. SDO granted NA permission dated 04.06.2005 to Ms. Vrushali Patil. It is seen that both parties in the present case have relied upon several documents below Exhibit Nos.50 , 57 and 73 to show and claim exclusivity to the said vahitvat road. When such disputed question of facts are pleaded by both sides then a trial becomes essential. This is because the case asserted by Plaintiffs is denied by Defendants. In such a case at the *prima facie* stage unless there is *prima facie* evidence before the Trial Court it is improper for the Trial Court to opine that the said vahivat road is a private property of Plaintiffs. Such a finding in paragraph No. 18 of the Trial Court order without trial and *prima facie* evidence is incorrect in law.

18. The question before the Court was to *prima facie* ascertain the status of the said vahivat road on the basis of available material. This determination can be based and opined on the basis of appropriate documentary evidence which was placed on record. Defendant Nos.4 to 6 have placed on record evidence to show that the said vahivat road is a 'public road' for which 'public funds' have been utilised for its upkeep and maintenance over the years. It is seen that

Defendant No.2 – SDO by order dated 04.06.2005, granted NA permission to the Gat No.720/3 occupied by Ms. Vrushali Patil out of original Gat No.720 pursuant to which layout has been sanctioned by the Town Planning Authority. Thereafter it is seen that the said vahivat road has been stonewalled and paved by spending public funds. Such relevant entries in the Gram Panchayat record is placed before the Court. In this view of the matter there is much left to be decided to specifically identify the alleged Suit property as described in paragraph No.1 of their Suit plaint. Plaintiffs have claimed their right to the said road by prescription. Whether that prescription has been perfected into legal and judicial title is not shown to the Court. No evidence to accept Plaintiff's ownership right to the vahivat road is placed on record to *prima facie* appreciate Plaintiff's case of entitlement.

19. It is stated in the plaint that Suit property is a road like space of about 7 – 8 ft. of width along the western side of Gat No.708 to 711. However, *prima facie*, if the same is seen in Annexure "A", it encompasses several other Gat Numbers. Hence, there is a clear dichotomy in identification and description of the Suit property and it is depicted in Annexure "A" to the Suit plaint.

20. What is significant is the further averment in the Suit plaint by Plaintiffs and this goes to the root of Plaintiffs' right to use

the Suit property. According to Plaintiffs they have converted this vahivat road into a private road because they constructed their residential houses in their respective agricultural fields and during monsoon season they faced several difficulties to access their fields with bullock carts, tractors and transport vehicles. Hence, according to Plaintiffs, they themselves kept 7-8 ft. width road like space along the western side of their respective agricultural fields for their private use and convenience. This alleged right claimed by Plaintiffs is not perfected by them. If this is Plaintiffs' case, then it is not so certified by any documentary evidence either, though Plaintiffs may have been using it by prescription. The question before the Court is regarding status of the access road available to Gat No.720 in the present case. In this regard it is seen that Defendant Nos.1, 2 and 3 namely Collector, SDO and ADTP, have issued various letters and reports which are *prima facie* considered by the Courts below. In the findings returned in paragraph Nos.21 to 24 of the impugned order, there is reference to Tahasildar's report dated 29.03.2023 and another report dated 20.06.2023; then there is a third report given by Defendant No.3 – ADTP, dated 02.06.2023 and NA sanction order passed in regard to Gat No.720/3 of Ms. Vrushali Patil dated 04.06.2005 which are all considered. Thereafter in paragraph No.24 there is reference to Regional Town Planning Authority report dated 17.03.2023,

forwarded to Collector Satara, proposing tentative sanction to Defendant Nos.4 to 6. The contents of the aforesaid reports given by the statutory Authority and the record maintained by the local Gram Panchayat of village Vadhe is considered by the Appellate Court as *prima facie* evidence to determine the injunction case and rightly so.

21. Both the parties have referred to and relied upon the aforesaid documentary evidence in support of their respective case. Admittedly there is evidence placed on record which is seen by the Court to show that the said vahivat road has been maintained, stonewalled and paved by using public funds. Therefore whether the said road *prima facie* claimed to be a private road by Plaintiffs or a public road needs to be determined. The case of Plaintiffs is dependent merely on their averment of prescription and nothing more.

22. That apart Mr. Wadikar, learned Advocate for Petitioner, has drawn my attention to NA order dated 27.06.2023 of SDO to contend that there is a specific letter dated 06.02.2023 referred to therein by the PWD department which states that the subject area is not part of any road, as per the report which has been received. Save and except this, Plaintiffs have placed no other independent documentary evidence in support of their case, whereas the Tahasildar's report submitted to SDO before passing the order dated 27.06.2023 clearly records that the said vahivat road is reflected in the

Gram Panchayat record as road of Gram Panchayat in 'Form No. 23', admeasuring 4.5 meters in width from the water tank situated along the Patkhal Road to the residential house of Mr. Hindurao Nalavade.

23. If the said vahivat road was indeed a privately owned exclusive road of Plaintiffs then Gram Panchayat would not have incurred expenditure through public funds for its maintenance solely for the benefit of Plaintiffs who are owners of four (4) agricultural plot. Hence there is a clear dichotomy of facts on record. Plaintiffs case of private ownership of the said vahivat road is not at all convincing. If it is affirmed at this stage then undoubtedly there will be no access to Gat No.720/1, 720/2 and 720/3, even according to Plaintiffs' own case. This cannot be permitted unless Plaintiffs come with a strong *prima facie* case for injunction. They claim the Suit property to be a road like space. Most importantly, it has not come on record to show that Defendant Nos. 4 to 6 have an alternate access to their respective Gat Nos.720/1 and 720/2. In view of the above observations, the findings returned by the Appellate Court in paragraph Nos.34 and 36 appear to be cogent in a case for injunction before trial. Balance of convenience and whether the order would cause irreparable harm to either of the parties is based upon *prima facie* case presented before the Court.

24. In the present case, I am therefore inclined to agree with the findings of the learned District Judge, Satara in paragraph Nos. 34 and 35 which are reproduced below for reference:-

" 34. In the present case, as discussed above, the suit property is the road-like space kept by plaintiffs along the western side of their fields Gut Nos.708,709, 710 & 711 and according to them the same is purely for their own convenience. Admittedly, the said road is in the records of Vadhe Grampanchayat in Form No.23. If such a road did not exist for the use of the local people, then the Grampanchayat or Panchayat Samati or Zilla Parashid would not have paved and asphalted the said road out of public funds and would not have kept the entry of the said road in the Grampanchayat records as 'paved and asphalted road, has been in use for many years'. From the records of Vadhe Grampanchayat, it can be seen that the road has been available at that place for a long time and it is being used by the locals. Even the relevant authorities i.e. defendant nos. 1 to 3, after taking into consideration various objections raised have sanctioned layout proposals, though tentative, for Gut No.720. The status of the said road, whatsoever, would be decided after due trial. But from the records it appears that the 'suit property' is the road which has been in existence along the Vadhe to Phatkhal road, towards eastern side of Gut No.5 and along the western side of agricultural fields Gut Nos.708,709, 710 & 711. The said road appears to be an internal connecting southern-northern road starts from the Gut No.5 which is situated along the Vadhe-Phatkhal road, passes ahead through along the western side of agricultural fields Gut Nos.708,709, 710 & 711 till western boundary of Gut No.720.

35. It is pertinent to note that, even as per plaintiffs also the suit property is a road-like space kept by them along the western side of agricultural fields Gut Nos.708,709,710 & 711 for their convenience. It shows that, even plaintiffs are also using the suit property as if road for their convenience. Therefore, in these facts and circumstances, if defendant nos. 4 to 6 are restrained from using the suit property as road for their convenience, then they will have to bear irreparable loss. Because nothing comes on record to show that defendant nos. 4 to 6 are having any alternate road to access the Gut No.720 and its sub-divisions. On the other hand, plaintiffs have been using the suit property/road-like space for their convenience. If defendant nos. 4 to 6 are allowed to use the same, till the decision of the suit, no any irreparable loss will not cause to plaintiffs. But an irreparable loss would certainly cause to the defendant nos 4 to 6, if they are resisted from using the suit property/road, which, as per local Grampanchayat records, has

been in use by local people since many years. Therefore, though the prima facie case lies in favour of plaintiffs, the balance of convenience & the aspect of irreparable loss are not in favour of plaintiffs.”

25. In view of the above observations and findings, the Writ Petitions fail. Twin orders dated 21.06.2024 passed in MCA No.48 of 2024 and MCA No.50 of 2024 are upheld. In the trial, all contentions of both parties are expressly kept open.

26. Writ Petition (ST) Nos.17888 of 2024 and 17889 of 2024 are dismissed.

[MILIND N. JADHAV, J.]

27. After the judgment is pronounced, Mr. Wadikar, learned Advocate for Petitioner persuades the Court to continue ad-interim order granted by the Trial Court which is in subsistence for a period of eight (8) weeks from today to enable the Petitioner to approach the Superior Court. Considering the issue involved the request is allowed. Ad-interim order shall continue for a further period of eight (8) weeks from today.

Ajay

[MILIND N. JADHAV, J.]

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