

R.C.S. No.535/2021

Shivaji & ors. V/s. SDM, Jalna & ors.

ORDER BELOW EXH.05

Plaintiffs moved present application under Order XXXIX Rule 1 & 2 of C.P.C. and prayed for restraining defendants from making *Tyre* road (Pakka road) from suit lands.

2. It is case of plaintiff that they are owner and possessor of land Block no.90, 91 and 97 respectively situated Mouza Viregaon Tanda, Tq. & Dist. Jalna (hereinafter referred as “suit properties”) shown within four boundaries mentioned in the application. Defendants have illegally made rough road from suit properties of plaintiffs without making any acquisition as well as payment of compensation. Suit properties are adjacent to the village, therefore those are valuable. Some peoples of Viregaon Tanda made application for the road in the year 2016 to approach their village from Block No.90, 91, 98, 89 and 179. Therefore, defendants were under obligation to acquire the land of said field. However, without following any procedure and back behind the plaintiffs, they sanctioned the road through order dated 28.02.2020. If defendants succeed to create permanent road from the suit properties, then plaintiffs would not be able to cultivate their land attaching to the road and they would suffer loss. Already the *Pandhan Rasta* (road) is in existence towards Western side of

the suit properties. Therefore, no need to create new road.

3. Initially plaintiffs had filed RCS No.182/2020, restraining defendants from creating new road. However their temporary injunction application came to be rejected. Therefore, that suit become infructuous. Therefore, they filed present suit for mandatory injunction. Still the work of *Tyre* road (Pakka Road) is going on. Therefore, said work needs to be restrained.

4. As per plaintiffs, they have proved prima facie case, balance of convenience lies in their favour and they will suffer irreparable loss if injunction is not granted. Therefore, prayed for temporary injunction as sought.

5. The defendant No.1 and 4 i.e. Tahsildar and Collector, Jalna filed their reply cum WS (Exh.18) and contended that the spot inspection has been conducted on 07.11.2019 by serving notice upon plaintiff no.1, 2 and 4. Plaintiff no.1 and father of plaintiff no.6 were present for measurement of suit properties land Block no.90, 91 and 97. During said measurement, it found that the possessor of land Block no.97 and 91 have encroached over the bank of River. They never created road from the private land of Block No.90, 91 and 97. However, the road is running from bank of river which is towards west of the suit properties. The land from which the road is running is not a private land, therefore no

question arose of acquisition and compensation. Finally, they prayed for rejection of present application.

6. Defendant No.2 and 3 failed to file their say, hence proceeded without their say.

7. On the basis of above rival pleadings and after hearing both parties, following points arose for my determination and I have recorded my finding against each of them for following reasons :

Sr. No.	Points	Findings
1.	Whether plaintiffs have proved prima-facie case ?	...No.
2.	Whether balance of convenience lies in favour of plaintiff ?	...No.
3.	Whether plaintiffs will suffer irreparable loss, if injunction is not granted ?	...No.
4.	What order ?	... Application is rejected.

REASONS FOR THE FINDINGS

8. Perused application along with documents. Heard learned advocate Shri Deshpande for plaintiffs. The learned AGP failed to argue the matter inspite of opportunities, hence treated to be heard.

AS TO POINT NOS. 1 TO 4 :-

9. Admittedly, plaintiffs have filed earlier RCS

No.182/2020 against these defendants for perpetual injunction restraining them from creating road, wherein the temporary injunction application has been rejected. Plaintiffs have filed present suit for mandatory injunction directing defendants for acquisition of land for road and compensation for the same.

10. It is to be noted that when Plaintiffs come with the case that road towards West of the suit properties sanctioned by defendant no.1 Tahsildar is running through the suit properties owned by them, then plaintiffs are under obligation to satisfy the Court that proposed sanctioned road is passing through their suit properties. No doubt the Tahsildar has power under Section 143 (2) of MLR Code to sanction road over the boundaries of survey numbers having regard to the need of cultivator for reasonable access to their fields. Moreover, the order under Section 143 of MLR Code is appealable before Appellate authority and even civil suit can be instituted against the said order.

11. Needless to mention here that the presumption is attached with any order passed by competent authority that while passing order, he has followed proper procedure as contemplated in the law unless it is rebutted by the other party. In such circumstances plaintiffs are under obligation to demonstrate through cogent prima facie material that the order passed by the Tahsildar is illegal or wrong. In this context, plaintiffs neither filed

any map nor made any measurement of the suit property. No any attempt on the part of plaintiffs to appoint TILR as a Court Commissioner to conduct the exact situation at the spot.

12. Per contra defendants have made measurement prior to granting of road to the villagers of Viregaon Tanda. During their measurement it found that the road is not passing from the suit properties, but it is going through the bank of River which is towards Western side of suit properties. Plaintiffs are not owners of the land from which the road is going to be constructed. The contention of defendants is supported by the documentary evidence i.e. panchnama, spot inspection, measurement and order of Tahsildar attached with list. Contrary no any cogent prima facie evidence brought by plaintiffs to show that the order of Tahsildar granting road is illegal or perverse.

13. No doubt plaintiffs are owners of suit properties Block No.90, 91 and 97, however they failed to bring on record that the road sanctioned by the Tahsildar is passing through the suit properties owed by them. Per contra the road appears to be granted from the bank of River which is not owned by plaintiffs. Thus, the question of acquisition of plaintiffs' land does not arise.

14. As such above discussion leads me to conclude that plaintiffs have failed to prove prima facie case and even balance of

convenience not lies in their favour. So far as irreparable loss is concern, already the work of road is going on. Villagers of Viregaon Tanda would suffer adversely if the construction of road sanctioned by the Tahsildar is obstructed. Per contra plaintiffs prima facie failed to demonstrate that the sanctioned road is going through suit properties, therefore they are not going to suffer irreparable loss. Plaintiffs have opportunity to prove their case on merit. At this juncture the relief sought by plaintiffs is not tenable in given fact and circumstances. Hence, I have recorded my finding to point No.1 to 3 in **Negative**. As a result, present application is liable to be rejected. Thus, I pass following order. :-

ORDER

1. The application (Exh.5) is rejected.
2. Cost in main cause.

Date : 13.09.2023

(Dr. Vikas G. Karmore)
3rdJt. Civil Judge S. D.
Jalna.