



(CNR No.MHSN150005312021)

Order below Exh.5 in R.C.S. No.98/2021

(Hanmant Dattatray Pawar V/s. Tahasildar Kadegaon & Or.1)

(1). Perused application and affidavit. Gone through documents produced on record. Plaintiffs have filed present application under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure, 1908 for temporarily restraining the defendant No.1 from taking coercive action of recovery of amount and also temporarily restraining defendant No.1 from carrying out process of auction sale earlier scheduled on 24/02/2021, 15/03/2021, 19/03/2021 and which is extended on 23/03/2022, in pursuance of the notice dated 17/07/2019 and order dated 03/08/2019.

Case of the plaintiffs in short, is under -

(2). That the plaintiffs are permanent resident of village Shivni, Tal. Kadegaon, Dist. Sangli and they are agriculturists. The plaintiffs possess agricultural land in Gat No.457/2 situated at village Shivni to the extent of 19.87R and having *pot kharab* of 0.10R. According to plaintiffs, on 09/07/2019, officers of defendant No.1 have prepared false and bogus *panchnama* dated 09/07/2019 and given wrong report to defendant No.1 and on the basis of the same, defendant No.1 has issued notice 17/07/2019 to plaintiff No.2.

(3). It is contended that the *panchnama* dated 09/07/2019 is pertaining to the land owned by one Hanmant Waghmode and only on the ground of political rivalry, name of plaintiff No.2 is inserted which is afterthought act at the hands of defendant No.1. According to plaintiffs, they have never excavated and transported any sand as alleged in the *panchnama* dated 09/07/2019 and notice dated 17/07/2019. It is contended that the plaintiffs are agriculturists and they do not possess any machinery and vehicle required for alleged excavation and transportation of sand. Therefore, the *panchnama* and notice issued to plaintiff No.2 is illegal. According to plaintiffs, in-spite of giving his reply dated 31/07/2019, it was not accepted and thereafter on 03/08/2019, defendant No.1 passed order whereby plaintiff No.2 was directed to deposit an amount of Rs.7,32,840/- by way of amount of alleged excavated sand of 15 brass plus amount of royalty and amount of rent. Therefore, the notice and order passed by defendant No.1 is illegal and not binding on the plaintiffs.

(4). Lastly, it is contended that, by virtue of alleged order dated 03/08/2019, defendant No.1 without giving any opportunity to the plaintiffs of being heard, certified Mutation Entry No.10394 and thereby kept charge of Rs.7,32,840/- on the land possessed by the plaintiffs in Gat No.457/2. According to plaintiffs, while taking effect of alleged order dated 03/08/2019 by virtue of Mutation Entry No.10394, defendant No.1 and revenue authority has not followed proper procedure laid down

in Maharashtra Land Revenue Code, 1966 for carrying out mutation entry and its certification. Lastly, it is apprehended that on 15/03/2021, thereafter on 19/03/2021 and recently on 23/03/2022 defendant No.1 has issued notice to the plaintiffs and public notice in newspaper for sale of portion of land in Gat No.457/2 on which charge of amount of Rs.7,32,840/- is kept. According to plaintiffs, if the land possessed by the plaintiffs is sold in public auction, they will suffer irreparable loss, which cannot be compensated in terms of money. Hence, the application.

(5). In pursuance to the notice of the application, defendant No.1 appeared and contested the application *vide* say at Exh.16. In his say, defendant No.1 has categorically denied all the material contentions put forth by the plaintiffs in respect of the notice dated 17/07/2019 and order dated 03/08/2019. According to defendant No.1, the issuance of above said notice and passing of order is an official act on the basis of powers invested with defendant No.1. Therefore, unless the appeal is filed against the said notice and order, the present suit is not maintainable. It is stated by defendant No.1 that the plaintiffs have excavated land in the Gat number stated in *panchnama* dated 09/07/2019 and transported the same by creating new road for transportation. According to defendant No.1, as plaintiff No.2 has failed to deposit the amount as stated in the notice dated 17/07/2019, his reply dated 31/07/2019 was not accepted and *vide* order dated 03/08/2019, the plaintiff No.2 was directed to deposit the above amount. In-spite of that as the

plaintiff No.2 failed to deposit the said amount, the charge of said amount came to be kept on the land possessed by plaintiffs in Gat No.457/2 by virtue of Mutation Entry No.10394 which is legal procedure resorted by defendant No.1.

(6). It is further stated by defendant No.1 that till date, plaintiffs have not challenged the order dated 03/08/2019 and Mutation Entry No. 10394 before proper forum and instead of doing so, plaintiffs have filed the present suit and application, which is not maintainable. Lastly, it is stated that *panchnama* dated 09/07/2019 is drawn on the spot and perusal of the same shows that one *panch* witness was present along-with concerned *Talathi*, Police Patil and Circle Officer of village Shivni and Wangi. Hence, there is no reason for mentioning name of plaintiff No.2 in the *panchnama* due to political rivalry. Lastly, it is stated that the action taken by defendant No.1 against the plaintiffs is lawful and therefore, the present application is not maintainable. Hence, it is prayed to reject the application with costs.

(7). On the basis of rival contentions and *prima-facie* documentary evidence placed on record, following points arise for my determination and I have recorded my findings on them for the reasons to follow :-

<u>Sr.No.</u>	<u>Points</u>	<u>Findings</u>
1.	Whether plaintiffs prove <i>prima-facie</i> case in their favour ?	...In the Negative

2.	Whether plaintiffs prove balance of convenience in their favour ?	...In the Negative
3.	Whether plaintiffs will suffer irreparable loss if the relief of temporary injunction is refused ?	...In the Negative
4.	What order ?	As per final order

REASONS

(8). In order to substantiate the claim of temporary injunction, plaintiffs have relied upon the copies of *panchnama* dated 09/07/2019, notice dated 17/07/2019, order passed by defendant No.1 dated 03/08/2019, notice dated 24/02/2021, certified copies of 7/12 extract of land Gat Number 457/2 and Mutation Entry No. 10394 and copy notice published in newspaper dated 16/03/2021.

(9). I have heard learned advocates for the plaintiffs and defendant No.1 at length.

As to Point No.1 :-

(10). In order to substantiate the claim of temporary injunction, it is for the plaintiffs to establish *prima-facie* case in their favour that the above stated notice and order passed by defendant No.1 are *prima-facie* illegal and defendant No.1 had no authority issue such notice and to pass the order of imposition of penalty.

(11). In that context, plaintiff has specifically come up with the case that the plaintiffs are agriculturists and they have never excavated any sand as alleged by defendant No.1 in the notice dated 17/07/2019 and in the order dated 03/08/2019. So also, it is the case of the plaintiffs that the officers of defendant No.1 have prepared the bogus *panchnama* behind the back of the plaintiffs without recording the statements of any witnesses and only under the political pressure and rivalry. Therefore, the order of imposing of fine on the basis of alleged *panchnama* dated 09/07/2019 is illegal. Defendant No.1 has no authority to impose any such fine or penalty. Therefore, the order dated 03/08/2019 is illegal.

(12). In support of his arguments, the Ld. Advocate for plaintiffs Shri. Jadhav has drawn my attention towards *panchnama* dated 09/07/2019 and argued that Gat no. 1229, as stated in the same does not belong to plaintiffs but one Hanmant Waghmode and only on the ground of political rivalry, name of plaintiff no.2 is inserted thereafter. He has also argued that as the names of *panch* witnesses is not mentioned in *panchnama*, there is strong suspicion regarding preparation of alleged *panchnama* dated 09/07/2019. Lastly he has argued that the plaintiffs have never excavated any sand as alleged and therefore the order passed by defendant No.1 is *prima-facie* illegal and thus prayed for granting temporary injunction against defendant No.1.

(13). Per contra, the Ld. AGP for defendant No.1 Shri.

Hingmire has argued that though it is pleaded by the plaintiffs that defendant No.1 has implicated plaintiff No.2 only on the ground of political rivalry, there is no convincing evidence produced by the plaintiffs in support of the same. He has also argued that *prima-facie* perusal of copy of *panchnama* dated 09/07/2019 shows that one *panch* has signed on the *panchnama*. Therefore, it can be inferred that both the *panch* witnesses were present at the relevant time. Lastly, it is argued that the issuance of notice dated 17/07/2019 and passing of order dated 03/08/2019 is an official act done by defendant No.1. So also, as the plaintiffs have not paid any penalty and royalty, nor they have filed any appeal against the order dated 03/08/2019, the present application is not maintainable.

(14). I have carefully considered the arguments advanced by both the parties and *prima-facie* documentary evidence produced on record by both the sides. Before embarking on the merits of the application, it is necessary to have a look at the provisions of Section 48 (7) of Maharashtra Land Revenue Code, 1966. It reads as under :-

(7) Any person who without lawful authority extracts, removes, collects, replaces, picks up or disposes of any mineral from working or derelict mines, quarries, old dumps, fields, bandhas (whether on the plea of repairing or constructions of bund of the fields or an any other plea), nallas, creeks, river-beds, or such other places wherever situate, the right to which vests in, and has not been assigned by the State Government shall, without prejudice to any other mode of action that may be taken against him, be liable, ****on the order in writing of the Collector or

any revenue officer not below the rank of Tahsildar authorised by the Collector in this behalf, to pay penalty of an amount (upto five times) the market value of the minerals so extracted, removed, collected, replaced, picked up or disposed of, as the case may be:

(15). If the above provision is considered, it is clear that a person is not entitled without any lawful authority to extract or remove any mineral from the places stated as above and if a person does so without any lawful authority, he shall be liable on the order of the Collector or any Revenue Officer not below the Tahsildar, to pay the penalty of an amount up to five times of the market value of minerals so extracted or removed, etc. Therefore, it also becomes clear that Tahsildar is entitled to pass the order of imposition of the penalty as contemplated in the above said provision.

(16). If that being so, it was for the plaintiff to produce the source his averment as to how on the basis of political rivalry, his name was inserted afterthought by Defendant No.1. Whether the panch witnesses were present on the spot at the relevant time or not for preparation of alleged *panchnama* dated 09/07/2019, is purely matter of evidence and it requires full fledged trial to prove or disprove the same. Therefore, at this juncture, it cannot be inferred that the *panch* witnesses were not present at the relevant time. As stated earlier, the *panchnama* dated 09/07/2019 *prima-facie* reveals that on the said date, it was found that in Gat No. 1229 possessed by one Hanmant Waghmode, plaintiff No.2 has done unauthorized excavation of sand by creating road for its transportation. Hence, at this stage,

the plaintiffs have not produced any cogent and convincing evidence in order to establish their *prima-facie* case.

(17). It is also worth here to state that the notice dated 17/07/2019 and order passed by defendant No.1 dated 03/08/2019, is appealable under the provisions of Maharashtra Land Revenue Code, 1966. Thus, the plaintiffs had equally efficacious remedy available in the form of appeal under Section 247 of Maharashtra Land Revenue Code, 1966. In that context, in the Judgment of **Govind Nivrutti Shep V/s. State of Maharashtra and Ors.** (Writ Petition No.4258/2018 dated 02/08/2018), in para No.24 to 26 of the said Judgment, it is held by Hon'ble Bombay High Court that *any order passed by Tahsildar directing imposition of penalty, is liable to be challenged before superior Revenue Officer in an appeal by invoking powers under the Code of 1966.* Thus, the Hon'ble High Court in the above Judgment has rejected the challenge raised to provisions of Section 9 of Maharashtra Land Revenue Rule, 1968 published in the Notification dated 12/01/2018. However, plaintiffs have not opted for the same nor have they deposited a single amount of penalty and royalty as imposed *vide* order dated 03/08/2019. Thus, in view of provisions of Section 41(h) of Specific Relief Act, 1963, the plaintiffs are not entitled to claim temporary injunction against defendant No.1.

(18). So also the plaintiffs have prayed for temporary injunction against defendant No.1 restraining him from recovery the amount of penalty by attachment of property of plaintiffs by

keeping charge. In so far as provisions of Maharashtra Land Revenue Code, 1966 are concerned, defendant No.1 has every right to recover the amount of penalty in the form of arrears of agricultural land revenue by taking every resort available to him. As the plaintiff has not challenged the order dated 03/08/2019 before superior revenue authority, in view of provisions of Section 41 of Specific Relief Act, the plaintiffs are not entitled to claim any injunction against defendant No.1 restraining from recovering the penalty and royalty by all available modes. Thus, considering all these aspects, I am of the considered view that the plaintiff have failed to prove *prima-facie* case in their favour. I, therefore record my findings to point No.1 in the Negative.

As to Point Nos.2 and 3 :-

(19). I have recorded my findings to Point No.1 in the negative. Hence, I am also of the opinion that as the plaintiffs have failed to prove *prima-facie* case, balance of convenience does not tilt in their favour. Therefore, the question of any irreparable loss will not arise. Hence, considering these aspects, I record my findings to Point No.2 and 3 in the negative.

As to Point No.4 :-

(20). The cumulative effect of my findings to Point No.1 to 3 is that the application fails and deserves to be rejected. Hence, in the result, in answer to Point No.4, I pass the following order :-

ORDER

- (1). The application stands rejected.
- (2). Costs in cause.

Vita.

Date : 23/03/2022

(A.N.Kulkarni)

**Jt. Civil Judge Senior Division,
Vita**

CERTIFICATE

I affirm that, the contents of this P.D.F. file order are same, word to word, as per the original order.

Name of Stenographer : S. A. Mane (Grade-II)

Court : Jt.Civil Judge Senior Division, Vita

Date : 23/03/2022

Order signed by the : 23/03/2022
Presiding Officer on

Order uploaded on : 23/03/2022