



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

914 WRIT PETITION NO. 2346 OF 2024

SANTOBA RAMRAO WAGH AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA THROUGH THE DISTRICT
COLLECTOR AND OTHERS

...

Advocate for the Petitioner :

Mr. S. S. Kulkarni h/f. Mr. Rathod Vivek Uttamrao
AGP for Respondents / State: Mr. P. R. Bharaswadkar

...

CORAM : ARUN R. PEDNEKER, J.

DATE : 29th FEBRUARY, 2024

PER COURT:

1. Heard.
2. Mr. S. S. Kulkarni holding for Mr. Rathod Vivek Uttamrao, learned counsel for the petitioners submits that the trial court on the basis of the material before it has rendered a prima facie finding that there is no way on the common bandh of Gut No.79 and 80.
3. The learned counsel submits that in view of the said prima facie finding that there is no way in existence, the injunction granted by the trial court ought not to have been set aside by the appellate court by rendering an alternate finding of fact i.e. by holding that on perusal of record prima facie it is indicated that there is a little canal running

through Gut No.79 and 80 and that it was utilized by locals including the appellant because there was no alternate way. The prima facie finding of the trial court ought not to have been disturbed by the appellate court. The learned counsel relies upon the judgment of the Hon'ble Supreme Court in the case of **Wander Ltd. And anr. Vs. Antox India P Ltd.**, dated 26.04.1990, 1990 (2) ARBLR 399 (SC), at para 9 as under:-

“9. The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, the Appellate Court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate Court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by the court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that it if had considered the matter at the trial stage it would have come to the contrary conclusion. If the discretion has been exercised by the Trial Court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of

discretion. After referring to these principles Gajendragadkar, J. in Printers (Mysore) Private Ltd. v. Pothan Joseph:

... These principles are well established, but as has been observed by Viscount Simon in Charles Osention & Co. v. Johnston the law as to the reversal by a court of appeal of an order made by a judge below in the exercise of his discretion is well established, and any difficulty that arise is due only to the application of well settled principles in an individual case.

The appellate judgment does not seem to defer to this principle.”

4. In view of the same, issue notice to the respondents, returnable on 12.04.2024. The learned AGP waives service of notice for the State Authorities.

5. Hamdust allowed.

6. In addition, the learned counsel for the petitioners to serve the respondents by permissible private modes.

7. There shall be ad-interim stay to the impugned order dated 16.08.2023, passed by the District Judge-1, Parbhani in Misc. Civil Appeal No.44/2023 below Exhibit – 20, till the next date.

8. List this matter on 12.04.2024, immediately after the fresh admission matters for consideration of the interim relief.

9. In the event, the petitioner fails to serve the respondents by the next date, the interim order granted would stand automatically vacated.

[ARUN R. PEDNEKER, J.]

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