
(2010) 02 BOM CK 0008

In the Bombay High Court

Case No : L.P.A. No. 171 of 2009 in Writ Petition No. 2383 of 2009

Shantabai Patil and Others

APPELLANT

Vs

Bhagwan Patil and Others

RESPONDENT

Date of Decision : 09-02-2010

Acts Referred:

Maharashtra Land Revenue Code, 1966 — Section 143, 143(1), 143(4), 143(5)

Citation : (2010) 4 BomCR 339 : (2011) 1 MhLj 481

Hon'ble Judges : N.D. Deshpande, J;A.P. Deshpande, J

Bench : Division Bench

Advocate : U.S. Malte, for the Appellant; A.S. Sawanti, for Respondent Nos. 1 and 2 and S.V. Kurundkar, Additional Govt. Pleader for Respondent Nos. 3 to 5, for the Respondent

Final Decision : Allowed

Judgement

N.D. Deshpande, J.—The present Letters Patent Appeal is arising out of Writ Petition No. 2383/2009 of the Petitioners/who are the present Appellants and is directed against the order of learned Single Judge of this Court dated 6-7-2009. The parties are neighbouring land holders of village Nishane (Bk). It is undisputed that Petitioners are the owners of gat No. 307/1 and 307/2, which is recently purchased by the Petitioner No. 3 and the gat No. 310 is owned by the Respondents No. 1 and 2. The dispute is regarding right of way namely bullock cart wahiwat of Petitioners along gat No. 310 belonging to Respondents No. 1 and 2. Therefore, the Petitioners made application to the Tahsildar Dharangaon for declaration and injunction against the Respondents 1 and 2 on or about 4-6-2007. The learned Tahsildar by an order dated 19-10-2007 held inquiry and declared Petitioners' right of way and bullock cart wahiwat along bandh of gat No. 310 and injunction was ordered against the owners of gat Nos. 309 and 310 to said Wahiwat. The said order was challenged by the Respondents No. 1 and 2. firstly in the Civil Court by filing Regular Civil Suit No. 63/2007 as Plaintiffs in the Court of Civil Judge Junior Division, Erandol against the Petitioners as Defendants

and also filed an appeal before the Sub Divisional Officer. Jalgaon.

2. The Respondents 1 and 2 who are Plaintiffs in regular civil suit are seeking declaration that the Petitioners" have no right of way or wahiwat as alleged and the order passed by the learned Tahsildar Dharangaon be declared as erroneous and illegal and also prayed for injunction. However, no temporary injunction was granted in a pending suit of Respondents No. 1 and 2.

3. The dispute was also heard at length by the learned Sub Divisional Officer in an Appeal No. Wahiwat/06/2007 and an elaborate order came to be passed on 18-2-2009 touching the pending civil suit bearing R.C.S. No. 63/2007 on the same issue and challenge to impugned order of Tahsildar dated 19-10-2007. As such, the learned Sub Divisional Officer partly allowed the appeal/revision and remanded the matter to learned Tahsildar Dharangaon for fresh inquiry and decision within two months in accordance with law. Therefore, the Petitioners filed writ petition and impugned the order of remand dated 18-2-2009 of learned Sub Divisional Officer, Jalgaon in Wahiwat Appeal No. 06/2007 and learned Single Judge having refused to entertain the writ petition against the remand order passed by Sub Divisional Officer, hence this Letters Patent Appeal. 4. Therefore, the question that arises for consideration, is whether during pendency of Civil Suit, wherein legality of order passed by the Tahsildar is subjudice can appeal or revision is maintainable before the Sub Divisional Officer ? Perused the impugned order. The dispute between the parties is pending in the Civil Court and, therefore, reliance has been placed on the judgment of this Court reported in Jaglal Jayaswal and Another Vs. Waman Dhobale and Another, . The relevant para No. 9 of the above judgment is reproduced here below:

9. In view of substantial question of law framed, it is apparent that the only question to be decided is whether in the pending suit, the Order of Tahsildar u/s 143(1) could have been assailed. As already stated above from the facts, it is clear that the Appellant Defendant approached the Tahsildar when the Civil Suit was already filed on the very same subject-matter. The provisions of Section 143(1), Sub-section (5) clearly shows that the legislature has taken precaution to see that no inconsistent orders come into force and once a decision of Tahsildar is challenged in the Civil Suit, further challenge to such order before the revenue authorities is expressly prohibited. It is not the case of any of the parties that in case of grievance of present nature. Civil Suit cannot be filed directly. It is, therefore, apparent that the party who has grievance has an option either to approach the Tahsildar u/s 143(1) and then to file a Civil Suit. In these circumstances, after the Civil Suit is filed, if it is held that the approach to Tahsildar in very same matter u/s 143(1) is legal and permissible the possibility of inconsistent orders being passed again emerges. In fact, in view of the precaution take vide Section 143 Sub-section (5), and primacy given to Civil remedy, it is clear that after an inconsistent order or to make an attempt for any different order at least till Tahsildar passes an order. In the circumstances, it is clear that as the Civil Suit was already filed on 28-12-1981, invocation of

jurisdiction of the Tahsildar by present Appellants on 24-3-1982 was itself legally not permissible,"

Section 143 of the Maharashtra Land Revenue Code -

143. Right of way over boundaries. - (1) The Tahsildar may inquire into and decide claims by persons holding land in a survey number to a right of way over the boundaries of other survey numbers.

(2) In deciding such claims, the Tahsildar shall have regard to the needs of cultivators for reasonable access to their field.

(3) The Tahsildar's decision under this section shall, subject to the provisions of Sub-sections (4) and (5), be subject to appeal and revision in accordance with the provisions of this Code.

(4) Any person who is aggrieved by a decision of the Tahsildar under this section may, within a period of one year from the date of such decision, institute a civil suit to have it set aside or modified.

(5) Where a civil suit has been instituted under Sub-section (4) against the Tahsildar's decision, such decision shall not be subject to appeal or revision.

5. The facts appear mostly similar in the present dispute could be made applicable to the present dispute. Admittedly a Civil Suit is pending at the instance of the Respondents No. 1 and 2, who are aggrieved by the order of learned Tahsildar dated 19-10-2007, which came to be challenged before the Sub Divisional Officer, Jalgaon. In the light of clear mandate of Section 143(5) challenge to the Tahsildar's decision cannot be sustained in law in appeal or revision when a Civil Suit is pending. Hence, the impugned order of Sub Divisional Officer dated 18-2-2009 is without jurisdiction and is quashed.

6. In that view of the matter, we are of the considered view that, the impugned order passed in Writ Petition No. 2383/2009 deserves to be quashed and set aside. In the result the order passed by the learned Single Judge in Writ Petition No. 2383/2009 is quashed and set aside. The Letters Patent Appeal is allowed and accordingly disposed of.