

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5632 OF 2008

Raigonda Krishna Patil & Ors. .. Petitioner

vs.

The Sub Divisional Officer & Ors. .. Respondent

Mr. D.B. Patil for the Petitioner.

Mr. Amit Borkar for Respondent Nos. 2 to 4

Mrs. Vaishali Nimbalkar, AGP for Respondent No.1

CORAM : M. S. SONAK, J.

DATE : 26TH NOVEMBER 2015.

P.C.

1] The challenge this petition is to the order dated 15th April, 2008 made by the Sub-Divisional Officer, Gadhinglaj allowing the respondent's revision under Section 23(2) of the Mamlatdar Court Act 1906 and setting aside Mamlatdar order dated 2nd June, 2007, by which some relief had been granted to the petitioner.

2] The Mamlatdar, in exercise of powers conferred, upon him by Section 5 of the said Act had issued directions to keep open, without any obstruction the suit road, on the basis that the same was an existing public road. The revisional Court, in making the impugned

order, has taken the view that after the consolidation of land, the map prepared, does not indicate the existence of any public road. The revisional Court has also taken cognizance of the circumstances that the respondent had already instituted regular Civil Suit No.146 of 2005 before the Civil Court and the same was pending consideration before the Civil Court.

3] It now transpires that regular Civil Suit No.146 of 2005 has since been withdrawn by the respondents. There is no clarity as to whether the civil suit was withdrawn no sooner impugned order dated 15th April, 2008 was made or whether the same was withdrawn even before the impugned order was made. If the suit was withdrawn even before the impugned order was made, then it is obvious that the revisional authority has placed reliance upon some non-existence material. If the suit is withdrawn soon after the impugned order was made, it is apparent that one of circumstances which prompted the revisional Court to make the impugned order is no longer in existence. The maps and records upon which reliance had been placed by the petitioner earlier before the Mamlatdar did indicate the existence of a road. However, post consolidation, new maps came to be prepared which did not indicate existence of the road. The circumstance that a road is no longer indicated on the

map, is not by itself, a circumstance that the road does not exist at the site. It is possible that post consolidation, the survey numbers and other details have undergone change. It is also possible, as contended by Mr. Borkar, the learned Counsel for the petitioner that there was never any public road in existence at the site. In order to determine by these issues, it would be appropriate if the impugned order dated 15th April, 2008 is set aside and the matter is remanded to the revisional authority for fresh consideration of the respondents revision in accordance with law and on its own merits.

4] However, at this stage, it is not possible to direct restoration of status-quo ante. This is because the impugned order dated 15th April, 2008 has been in operation since the year 2008. This Court, by order dated 8th December, 2008 had declined interim relief to the petitioner. In these circumstances, it would be appropriate if revisional authority is directed to dispose off the revision application as expeditiously as possible and in any case within a period of 3 months from the date of production of authenticated copy of this order. The status-quo shall be maintained by all parties till the disposal of the revision application.

5] The parties are directed to appear before the revisional

authority on 7th December, 2015 at 3 pm and produce authenticated copy of this order.

6] Rule is made absolute to the aforesaid extent.

7] There shall be no order as to the costs.

(M. S. SONAK, J.)

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