

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 2718 OF 2015

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GULAB BALVANT BHOSALE AND OTHERS
VERSUS
RAVINDRA GITARAM PATHARE AND OTHERS

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Advocate for Petitioners : Mr R R Karpe
AGP for Respondents 5,6 : Mr N B Patil
Advocate for Respondent 1 : Mr V V Tarde

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CORAM : V.K. JADHAV, J.

Dated: February 08, 2016

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PER COURT :-

1. By consent of learned counsel for respective parties,
heard finally.

2. The instant writ petition takes exception to the order dated 02.01.2015 passed by the Respondent no.6 Sub-Divisional Officer, Shrirampur Division, Shrirampur in R.T.S. No.156 of 2013, wherein the earlier order passed by the Respondent No.5-Tahsildar dated 1.7.2013 in Rasta Case No.31 of 2011 is quashed and set aside and matter is remitted back for decision afresh after giving notices to all the interested persons.

3. Learned counsel for the petitioners submits that, the petitioner-original applicant in Rasta Case No.31 of 2011

contended that, there is an obstruction/impediment on the way accessible to the field of the petitioner. Learned counsel submits that, the Tahsildar, Rahuri, has personally inspected the spot and accordingly drawn panchnama to that effect on 22.5.2013. Learned counsel submits that, in light of the said panchnama and other documents placed on record, the Tahsildar has come to the conclusion about the existence of the way and further directed the Respondent-Malanbai Karbhari Bhosale to remove the obstruction/impediment of the cart way which is towards the eastern part of land gat no.394. Learned counsel further submits that, being aggrieved by the same, the person who is not party to the original proceeding alongwith said Malanbai preferred revision before the Sub Divisional Officer, and, the Sub Divisional Officer, Shrirampur, erroneously partly allowed the said revision and remanded the matter to Tahsildar, Rahuri for decision afresh.

4. Learned counsel for respondent no.1-Ravindra Pathare submits that, though he was likely to be affected by the order passed by the Tahsildar in Rasta Case no.31 of 2011, he was not made as party to the original proceeding. Consequently, he alongwith said Malanbai Bhosale preferred R.T.S. appeal before the Sub Divisional Officer, Shrirampur Division,

Shrirampur. Considering the fact that, he has also affected by the order passed by the Tahsildar, the learned Sub Divisional Officer, Shrirampur Division, Shrirampur, by its impugned order dated 2.1.2015, quashed and set aside the order passed by the Tahsildar, Rahuri and further directed the Tahsildar to issue notices to the all interested persons and decide the matter on merits, afresh. Learned counsel submits that, the order passed by the Sub-Divisional Officer, Shrirampur, is proper, correct and legal and calls for no interference.

5. I have also heard learned AGP for respondent no.5 and 6, also.

6. It appears from the record that, said Ravindra Gitaram Pathare, who is respondent no.1 herein, is owner in possession of the land gat no.395 part-I and he would be a person affected by the order passed by the Tahsildar in Rasta Case No.31 of 2011. It is a part of record that, in Rasta Case, the respondent no.1 herein was not impleaded as party and no opportunity of being heard was given to him. So, in view of this, the learned Sub-Divisional Officer, Shrirampur Division, Shrirampur has rightly quashed and set aside the order passed by the Tahsildar, Rahuri and remanded the

matter for inquiry afresh after issuing notices to interested persons. I find no fault in the impugned order passed by the Sub Divisional Officer, Shrirampur. Said Rasta case is of the year 2011. Thus, by giving certain directions for expeditious disposal of Rasta case No.31 of 2011, this writ petition can be disposed of. In the result following order is passed.

ORDER

1. Writ petition is hereby dismissed.
2. The Tahsildar, Rahuri, is hereby directed to dispose of Rasta Case No.31 of 2011 in view of Section 5 (2) of the Mamlatdar's Courts Act, 1906, within a period of one month from the date of receipt of this order, on its own merits. All points kept open.
3. In the circumstances, there shall be no order as to costs.

(V.K. JADHAV, J.)

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aaa/-