

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2109 OF 2016

- | | |
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| 1. Mr. Tukaram Vithoba Eakal |] |
| Age-65, Occ: Agriculture, |] |
| R/o. Zulpewadi, Taluka-Ajara |] |
| Dist- Kolhapur. |] |
|
2. Mr. Ananda Tukaram Eakal |] |
| Age-55, Occ: Agriculture, |] |
|
3. Mr. Pandurang Laxman Belwadkar, |] |
| Age-60, Occ: Agriculture, |] |
|
4. Mr. Ajit Pandurang Eakal |] |
| (Since deceased deleted) |] |
|
5. Mr. Ganpati Dattu Aswale, |] |
| Age-45, Occ: Agriculture, |] |
| No.2 to 5 All are R/o. Sadar, |] |
| Taluka-Ajara, Dist-Kolhapur. |].. Petitioners |

Versus

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|---------------------------------|---|
| 1. Hanmant Bapu Patil, |] |
| Age-65, Occ: Agriculture, |] |
| R/o. Chimne, Taluka-Ajara, |] |
| Dist. Kolhapur. |] |
|
2. Mr. Chandrakant M Patil, |] |

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| Age-55, Occ: Agriculture, |] |
| 3. Mr. Kakasaheb Gundu Patil, |] |
| Age-65, Occ: Agriculture, |] |
| 4. Mr. Sameer Yeshwant Patil |] |
| Age-35, Occ: Agriculture, |] |
| 5. Mr. Rajaram Murappa Nandvadekar, |] |
| Age-55, Occ: Agriculture, |] |
| 6. Mr. Walwant Murappa Nandvadekar, |] |
| Age-50, Occ: Agriculture, |] |
| 7. Mr. Jyotiba Krishna Nandvadekar, |] |
| Age-80, Occ: Agriculture, |] |
| 8. Mr. Ramdas Namdev Patil, |] |
| Age-42, Occ: Agriculture, |] |
| 9. Mr. Shivaji Santu Shivne, |] |
| Age-48, Occ: Agriculture, |] |
| 10. Mr. Sandesh Kudalik Patil, |] |
| Age-38, Occ: Agriculture, |] |
| Nos.2 to 10 all are resident of |] |
| Sadar, Taluka-Ajara, |] |
| District-Kolhapur. |] |
| 11. Tahsildar, Ajara, |] |
| Taluka-Ajara, District-Kolhapur. |] |

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|-----------------------------------|----------------|
| 12. Divisional Officer, |] |
| Uttur Division, Taluka-Ajara, |] |
| District-Kolhapur. |] |
|
13. The State of Maharashtra, |] |
| Through Govt. Pleader, |] |
| High Court, A.S. Mumbai. |]..Respondents |

Mr. R. S. Ghatge i/by Mr. A. S. Desai, for the Petitioners.

Mr. P C. Kamble, for the Respondent Nos.1 to 10.

Mrs. M. S. Bane, "B" Panel Counsel for the Respondent Nos.11 to 13.

CORAM : R.M. SAVANT, J.

DATE : 3rd MAY 2016

ORAL JUDGMENT

1. Rule, with the consent of the Learned Counsel for the parties made returnable forthwith and heard.

2. The writ jurisdiction of this Court is invoked against the order dated 08.02.2016 passed by the Sub Divisional Officer, Aajra-Bhudargad Sub Division, Gargoti, District Kolhapur. By the said order, the Revision filed by the Petitioners (wrongly referred to as "Appeal" in the order) came to be dismissed and resultantly, the order dated 01.01.2016 passed by the Tahsildar, Aajra came to be confirmed.

3. It is not necessary to burden this order with unnecessary details having regard to the nature of the final directions to be issued. Suffice it would be to state that the Respondent Nos.1 to 10 herein had filed an application under Section 143 of the Maharashtra Land Revenue Code claiming a road on the Bandh of Gat Nos.580, 582, 596 and 600 which are the lands of the Petitioners herein to approach their lands. In the said application notices came to be issued to the Petitioners. Whilst the said application filed under Section 143 was pending, the Respondent Nos.1 to 10 filed an application under Section 5 of the Mamlatdar's Court Act for removal of the obstruction which has been created by the owners of Gat Nos.596, 582, 580 and 600 by growing sugarcane. The Tahsildar, Aajra on the very next day i.e. on 01.01.2016 allowed the said application under Section 5 filed by the Respondent Nos.1 to 10 and directed the Respondents to remove the obstruction which they have created in Gat Nos.580, 582, 596 and 600 going east to west and keep open a 10 ft. wide road. The Tahsildar also injuncted the Respondents in the said application i.e. the Petitioners herein from creating obstruction in future.

4. The Petitioners herein who are the Respondents in the said application aggrieved by the said order dated 01.01.2016 challenged the same by way of a Revision under Section 23 of the said Act. The Revisionary Authority i.e. the Sub Divisional Officer, Aajra Bhudargad Sub

Division, considered the said Revision Application. However, in so far as the grant of new road is concerned, the Sub Divisional Officer observed that since the road which the Applicants are claiming is through lands which are undulating, it would not be practicable to grant such a road to the Applicants. However, the Sub Divisional Officer has relied upon the spot inspection report dated 29.01.2016 and has come to a conclusion that there was an existing road which has been obstructed by the Petitioners and therefore recorded a finding that there is no warrant to interfere with the order passed by the Tahsildar dated 01.01.2016 and accordingly dismissed the Revision by the impugned order dated 08.02.2016. As indicated above, it is the said order dated 08.02.2016 which is taken exception to by way of the above Petition.

5. The principal contention of the Learned Counsel for the Petitioners Mr. R. S. Ghatge is that the Tahsildar has passed the order dated 01.01.2016 without following the procedure prescribed by Section 14 of the Mamlatdar's Court Act. It was the submission of Mr. R. S. Ghatge that the Tahsildar has not even carried out spot inspection before passing of the said order dated 01.01.2016. In fact, the Learned Counsel submitted that the said order is passed on the very next day to the filing of the application.

6. Per contra, the Learned Counsel appearing on behalf of the Respondent Nos.1 to 10 i.e. the Applicants before the Tahsildar sought to support the impugned order, but fairly stated that having regard to the report dated 29.01.2016 the same was obviously not before the Tahsildar when he passed the order dated 01.01.2016.

7. Having heard the Learned Counsel for the parties, I have considered the rival contentions. As indicated above, initially the application filed by the Respondent Nos.1 to 10 was one under Section 143 of the Maharashtra Land Revenue Code. However, thereafter on 31.12.2015 the Applications invoked Section 5 of the Mamlatdar's Court Act for removal of obstruction in the said Gat Nos.580, 582, 596 and 600 so as to enable the Applicants to carry their agricultural produce. The said application was allowed by the Tahsildar on the very next day i.e. on 01.01.2016. In terms of the Mamlatdar's Court Act, a notice is required to be issued under Section 14, however no such notice seems to have been issued by the Tahsildar to the Petitioners who are the concerned parties. It is also required to be noted that the Tahsildar does not seem to have obtained any spot inspection report prior to considering the application dated 31.12.2015 filed by the Applications under Section 5. In fact, the said inspection report is post the order passed by the Tahsildar as can be seen from the order passed by the Sub Divisional Officer who has adverted

to the report as bearing the date 29.01.2016. Hence, in the instant case, the application under Section 5 of the Mamlatdar's Court Act has not been dealt with in the manner prescribed by the said Act in the matter of issuing notices etc. In that view of the matter, the impugned order dated 08.02.2016 passed by the Sub Divisional Officer, Aajra Bhudargad Sub Division, as also the order dated 01.01.2016 passed by the Tahsildar, Aajra is required to be quashed and set aside and is accordingly quashed and set aside and the matter is relegated back to the Tahsildar, Aajra for a de-novo consideration of the application filed under Section 5 of the Mamlatdar's Court Act by the Respondent Nos.1 to 10. The Tahsildar, Aajra would be well advised to follow the procedure prescribed for deciding the application Exh.5 and thereafter pass appropriate orders in accordance with law. The Petition is allowed to the aforesaid extent. Rule is accordingly made absolute in the aforesaid terms.

8. On remand, the parties to appear before the Tahsildar, Aajra on 16.05.2016. The Tahsildar, Aajra thereafter to decide the application expeditiously. The parties are directed to maintain status-quo as on date pending the consideration of the application by the Tahsildar.

[R.M. SAVANT, J]