

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION St. NO. 33682 OF 2016**

**Mahadev Bhagvantrao Bhosale
Vs.
State of Maharashtra & Ors**

..Petitioner

..Respondents

**Mr. N. J. Patil i/b Mr. D. S. Geete for the Petitioner
Mrs. V. S. Nimbalkar AGP for the Respondent Nos.1 to 3
Mr. S. N. Gawade i/b Shree & Co. for the Respondent No.4**

**CORAM : R. M. SAVANT, J.
DATE : 23rd DECEMBER, 2016**

P.C.

1 The Writ Jurisdiction of this Court is invoked against the order dated 1-6-2016 passed by the Sub Divisional Officer (SDO), Khed, Sub Division Khed, by which order, the Revision Application filed by the Petitioner came to be rejected and resultantly the order dated 7-2-2015 passed by the Tahsildar Khed, came to be confirmed.

2 It is not necessary to burden this order with unnecessary details. Suffice it would be to state that the impugned order has been passed in the proceedings under Section 5 of the Mametdar Courts Act 1908. The Respondent No.4 herein is the proponent of the application filed under the said provision. It was the case of the Respondent No.4 that the right of way which the villagers were using has been obstructed on account of the

construction being carried out therein. It seems that pursuant to the said complaint received from the Respondent No.4, the site inspection was carried out on 17-10-2013 and a panchnama was prepared pursuant thereto. In the said panchnama, it has been mentioned that in the right of way one Shivaji Bhosale has carried out construction to the extent of 13.40 x 3.8 mtrs. The Tahsildar on the basis of the material on record which included the said panchnama passed the order dated 12-5-2015 directing the Petitioner herein and the others to remove the said encroachment in the right of way.

3 The Petitioner aggrieved by the said order dated 12-5-2015 carried the same by way of a Revision under Section 23 of the said Act to the SDO. The SDO confirmed the order passed by the Tahsildar and directed the Petitioner to remove the encroachment in the said right of way. The SDO has referred to the site inspection carried out on 22-10-2013 in his impugned order. The SDO has further observed that obstructions have been created in the right of way which is being used by the villagers from long past. The SDO accordingly directed the removal of the said obstruction.

4 The principal contention urged by the Learned Counsel for the Petitioner is that the panchnama dated 17-10-2013 refers to the construction carried out by one Shivaji Bhosale and there is no reference to the Petitioner in the said panchnama. It was also the submission of the Learned Counsel that

the Petitioner was not heard by the Tahsildar prior to passing of the said order dated 12-5-2015.

5 Per contra the Learned Counsel Mr. Gawade appearing for the original Complainant i.e. the Respondent No.4 herein would contend that there is one more report dated 22-10-2015 submitted by the Circle Officer wherein the obstruction created on account of the construction of the Petitioner has been reflected. It was the submission of the Learned Counsel that the said right of way is being used by all the villagers and not only by the Respondent No.4 and therefore the said report dated 22-10-2015 also assumes importance.

6 In my view, having regard to the fact that the Petitioner was not heard by the Tahsildar as also having regard to the fact that the Circle Officer's report dated 22-10-2015 has not been furnished to the Petitioner, the impugned order dated 1-6-2016 passed by the SDO, Khed as also the order dated 12-5-2015 passed by the Tahsildar, Khed is required to be quashed and set aside and the matter is required to be relegated back to the Tahsildar for a denovo consideration of the application filed by the Respondent No.4. The Tahsildar is well advised to carry out the a fresh site inspection in the presence of the parties so that the parties are put to notice in respect of the alleged obstruction carried out by them in the right of way. The parties may appear

before the Tahsildar on 5-1-2017. The Tahsildar may thereafter fix the date for site inspection on which date he may direct the parties to remain present so that the site inspection can be carried out in their presence. The copies of the site inspection report to be furnished to the parties. The Tahsildar may thereafter proceed with the application and pass orders in terms of the directions as contained hereinabove by giving proper opportunity to the parties.

5 The Petition is allowed to the aforesaid extend and is disposed of as such.

[R.M.SAVANT, J]