

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

Writ Petition No.2086 of 2013

* Baburao s/o Maruti Sawant.
Age 54 years,
Occupation : Agriculture,
R/o Walwad, Taluka Bhoom,
District Osmanabad. **.. Petitioner.**

Versus

- 1) Hanumant s/o Yada Naik,
Age 50 years,
Occupation : Agriculture,
R/o Walwad, Taluka Bhoom,
District Osmanabad.
- 2) The Tahsildar, Bhoom,
District Osmanabad.
- 3) The Sub Divisional Officer,
Bhoom, District Osmanabad.
- 4) The Additional Collector,
Osmanabad, District Osmanabad. **.. Respondents.**

Shri. Prashant K. Deshmukh, Advocate, for petitioner.

Shri. V.G. Sakolkar, Advocate, for respondent No.1.

Shri. S.B. Pulkundwar, Assistant Government Pleader, for
respondent Nos.2 to 4.

Coram: T.V. NALAWADE, J.

Date: 7 July 2017.

ORAL JUDGMENT:

1) Rule, rule made returnable forthwith. By consent heard both the sides for final disposal.

2) The proceeding is filed to challenge the order made by the learned Tahsildar Bhoom in proceeding No.2008/Jama/Kawi/2933 and also the order made by the learned Sub Divisional Officer Bhoom in File No.2011-ROR-CR-102. Both the sides are heard.

3) It appears that some villagers of village Walwad, Tahsil Bhoom had made application before the Tahsildar and they had requested to create cart way through agricultural land Survey Nos.18, 28, 31, 32, 37, 26, 38, 36, 27, 42, 49, 57, 56, 55 by contending that they are the owners of these lands. The Tahsildar prepared panchnama for ascertaining the things and then made order on 17-2-2009 which is as follows :

"For going to the fields and houses of Patule, Mane, Shelke, Mali, Mohite, Vibhute and Dudhal of village Walwad, cart way of permanent nature was opened."

4) The petitioner is the owner of Gat No.16/2 admeasuring 1 Hectare and 25 R and it is his contention that the Tahsildar had no power under the Mamlatdar's Courts Act, 1906 to create such new cart way. It is also the contention that the procedure given for hearing matters filed under section 5 of this Act was not followed. The learned counsel for the petitioner submitted that the order of the Tahsildar does not show that road was created as per provision of section 143 of the Maharashtra Land Revenue Code as there is specific mention of the provisions of the Mamlatdar's Courts Act in his order.

5) There is no record that summonses as required under the Mamlatdar's Courts Act were issued to the persons like present petitioner. The procedure given under the Act which is similar to the procedure given for deciding a suit, is required to be followed. Unless that procedure is followed, the application under this Act, which is treated as a plaint, cannot be allowed. Even the provision of section 143 of the Maharashtra Land Revenue Code shows that the power of the Tahsildar is only to decide as to whether the adjoining land holders have right

of way over the boundaries of other survey numbers. In the present matter, the order of the Tahsildar does not show that the road was created on the boundaries. Further it was the contention that in the past, some space was used as footpath. The provision of section 5 of Mamlatdar's Courts Act does not show that the Tahsildar has the power to create cart way. Similarly, provision of Section 143 of the Maharashtra Land Revenue Code does not show that the way can be created by Tahsildar on any other portion than mentioned in section 143. Thus it can be said that the Tahsildar has exceeded his jurisdiction. Such order deprives farmer of his property as the portion which is used as cart-way cannot be brought under cultivation. It is not the case of the respondents that cart way was acquired as easement. In view of these circumstances this Court holds that the order made by the Tahsildar cannot sustain in law.

6) In the result, the petition is allowed. The order of the Tahsildar and the order of the Sub Divisional Officer are set aside and the proceeding filed before the Tahsildar stands dismissed. It is made clear that the adjoining land

holders can use common *bandh* of the land of the petitioner as foot path and the width and height of this *bandh* will be as per the Survey Rules framed under the Maharashtra Land Revenue Code. Rule is made absolute in those terms.

Sd/-
(T.V. NALAWADE, J.)

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