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

WRIT PETITION NO. 5844 OF 2017

**MURALIDHAR GIRJUBA SABALE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

Advocate for Petitioner : Kiran D. Jadhav
AGP for Respondents: A.R. Kale**

CORAM : S.C.DHARMADHIKARI &
MANGESH S. PATIL,JJ.**

DATE : 30/06/2017

PER COURT :-

1] The petitioner who is aged 76 years has filed this writ petition against four respondents. These four respondents are as under:-
1]The State of Maharashtra, Through Secretary, Forest and Revenue Department, Mantralaya, Mumbai-32, 2]The Collector, Aurangabad, District Aurangabad., 3]The Tahasildar, Tahasil Office, Aurangabad, 4]The Deputy Superintendent of Land Record, Aurangabad, Damdi Mahal, Near Panchayat Samiti Office, Aurangabad.

2] It is an admitted position that all these respondents are represented by the Government Pleader, High Court Bench at Aurangabad. The Learned AGP is appearing for all of them. However the Tahsildar, Tahasil Office, Aurangabad is present in the Court pursuant to our earlier order. The petitioner's request was that he and many villagers are using the road styled as Shiv-Rasta. That is used by pedestrians for walking and transportation by cart etc.

The petitioner claims to be owner of land Gut No.559 admeasuring 2 H 43 R situated at village Bhogalwadi, Tq. and Dist. Aurangabad.

3] The petitioner in para 2 of this writ petition has stated as under:

“The petitioners say and submit that, the four boundaries of agricultural land of petitioner is towards east: land of gut no.550,548,54, Towards West: land of Gut no.560, towards North: Gavthan and Towards Murumkheda Shiv Rasta. The petitioner and many villagers were using the shiv rasta for carriers and transportation. The petitioner submits that there is also one short cut way to approached to the land of petitioner from Gavthan (North side). But due to erecting houses, tin shed in Gaonthan the short cut road is became temporary. Hence the petitioner and other villagers started to use the Shiv Rasta but in recent days the adjoining land holders of Shiv Rasta had made encroachment over the Shiv Rasta which caused obstruction to carry the bullock cart, cattle, agricultural equipments.”

4] He then in para 3 states that on the north to the agricultural land Gut No.559 there is gaonthan and on the south side of the agricultural land there is Murumkheda-Pimpalkhuta Shiv-Rasta. It may be that the petitioner and the villagers are logged in some dispute but the petitioner does not seek any redressal of the same from either this Court or any of these respondents.

5] The petitioner's representation was based on what the public officials have stated in their records. The public officials are aware of the revenue entries. He submits that there is a measurement and a map pursuant thereto which has been on record of the Talathi, copy of the same is annexed at page 22 of the paper-book. It is dated 29/05/2014. Then what the petitioner annexes is a sketch map and

which is prepared by none other than the Deputy Director of Land Records, Aurangabad. Relying upon all these the petitioner firstly approached this Tahsildar who is present in Court today by representation at page 24. He points out that there is an obstruction and encroachment on this road. It may be that the petitioner's lands were also used by some villagers as a road as is now claimed orally. We are not concerned with that part of the dispute. It is a Shiv-Rasta which is identified, that the petitioner says is on one side of his land and on the another side Bhogalwadi village is situated. He has stated that on the north side of his land Gut No.559 there is gaathan and on the southern side there is Murumkheda Shiv-Rasta which goes towards Pimpalkhuta. This is an existing road, but is not capable of being used because of encroachment. It is stated that attempts have been made to close this Shiv-Rasta. If that road is opened, it will not only assist the villagers but would also assist the petitioner.

6] We once again clarify that we are not concerned with any benefit or advantage that the petitioner seeks to derive from these letters and addressed to the revenue officials. He may be locked in a legal battle or may have a dispute with some villagers or adjoining land owners or others who have been passing through his lands allegedly. Our anxiety is that a representation was made as far back as on 14/05/2015 and thereafter the request is reiterated on 29/10/2015. But nobody pays attention to the petitioner's complaint. This is a public duty and which ought to be performed by the officials. We do not see any reason for these officials inaction and which is total and complete. We do not see how the Collector and who was approached not once but twice was powerless. If the petitioner has not only annexed public documents including maps but specifically alleged that these officials are not taking any action on account of

some political interference, It is this part which really disturbs this Court. From 2015 we travel to 2016 in which year also the petitioner made several representations. He also attended what is called the hearing of the grievances (Lokshahidin). It is finally on 07/11/2015 that the Tahsildar was called upon by the Collector to take action in terms of the law and the powers conferred thereunder. From 07/11/2015 what we have on record is a panchanama of the site drawn on 11/11/2016. This panchanama, copy of which is at page 39 specifically records that the petitioner made application and he desired that the encroachment be removed. Pursuant to such an application the site visit and inspection was carried out, which reveals that there is indeed Murumkheda-Bhogalwadi road and on the east side of that road the agriculturists have encroached and have utilized that portion for growing crops. It is indicated that these are not private lands. It may be that there is a reference to another walk-way or path but we are not concerned with that. What we find is that the encroachment is an admitted position. To say that there is no encroachment or the extent of which was not known is again belied by the report of the Mandal Officer, Ladsawangi, Tq. and Dist. Aurangbad dated 25/01/2016. He informs the Tahsildar that there are fields and lands. On the side of Bhogalwadi there is Gut No. 545, Gut No.575, Gut No.559, 560 and 561. The petitioner claims to be the owner of Gut No.559. Thus there are persons whose lands are located on the Bhogalwadi side of this road. Then there is another side which is called Murumkheda on which as well certain lands are located which are assigned the Gut numbers. We do not see how anybody can then claim that a measurement is necessary. The record in reference to these Gut numbers are available and admittedly with these public officials. The extent of ownership of these lands and how they are identified with boundaries is evident. There is a village map also. We do not think that armed with all this

and the panchanama this Tahsildar was powerless to take necessary action. Yet on 15/02/2016 he wants the competent authority to direct the measurement. That the Collector was moved on 15/02/2016 and thereafter on 06/04/2016 the Deputy Director of Land Records would intimate that this Tahsildar was aware that if any measurement has to be done, it has to be done by this authority viz. the Deputy Director of Land Records. We find that the papers or files have been sent from one department to another or one official to another though each one of them is a functionary under the Maharashtra Land Revenue Code, 1966. The Code has ample provisions and which also take care of the boundaries and measurements etc. We do not think that the Tahsildar, Collector or Deputy Director of Land Records all of whom are before us are so helpless to assist the petitioner that he has to approach this Court.

7] It is shameful that in this part of the State of Maharashtra atleast two of the respondents are senior level officials, one is from Indian Administrative Service. They are not so powerless or helpless to deal with the situation presented before us. If the Collector of the District cannot direct action to be taken and it is left to the subordinates, then, he better demit his office. If the Deputy Superintendent of Land Records, Aurangabad or the Deputy Director of Land Records or any of the superiors including the Collector cannot visit the site and cause a measurement to be done then we are sorry to observe they have failed to perform their public and statutory duties. More so when the petitioner produces copies of the panchanama and the other related documents for their perusal. It is in these circumstances that we have summoned the official and we are surprised when he stated that he requires six months time to complete the job. When we were reluctant to grant any time he promptly stated through the learned AGP that within a period of three

weeks from today he will perform the necessary function and take the steps as are warranted by law.

8] Since this Tahsildar is present in Court and the learned AGP is representing all including the Collector of the district, we direct that irrespective of who is encroacher and it might be the petitioner also the encroachment must be removed and the road cleared. That should be cleared as indicated before us within three weeks from today. If we do not find any compliance of this direction, we will not hesitate to pass necessary orders and which would be very drastic. We ought to remind public officials that failure to perform public duties or public functions can also be termed as an offence. If it is punishable, we will not hesitate to launch criminal prosecution. If it is departmental or disciplinary action, then, the lapse would be construed as a misconduct on their part which would be investigated departmentally and for which we may direct that pending all the enquiries and to ensure that these officials go nowhere near the evidence and tamper with it. We will not hesitate to suspend them from service. In addition to all this, we will also direct initiation of contempt proceedings.

9] We dispose of the Writ Petition with above directions.

(MANGESH S. PATIL,J.)

(S.C.DHARMADHIKARI,J.)

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