

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

WRIT PETITION NO. 8267 OF 2017

BHANUDAS KISAN THOMBARE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioners : Mr Shelke Manoj U.
AGP for Respondent-State : Mr S N Kendre
Advocate for Respondent 5,6 : Shri U. S. Bhadgaonkar

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CORAM : V.K. JADHAV, J.

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Reserved on : November 02, 2017
Pronounced on : November 21, 2017

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COURT'S ORDER :-

1. Heard finally with consent at admission stage.
2. By way of this writ petition, the petitioners are challenging the order passed by the Tahsildar, Aurangabad dated 7.9.2015 and the order passed by the Additional Collector, Aurangabad, dated 29.4.2017, thereby confirming the order passed by the Tahsildar, Aurangabad.
3. Brief facts, giving rise to the present writ petition are as follows :-
 - a] Respondent nos. 5 to 7 have filed an application

under section 5 of the Mamlatdar Court's Act, 1906 before the Tahsildar, Aurangabad seeking removal of encroachments on a bullock-cart way made by the petitioners with the directions to release old East West bullock cart way (Adgaon to Pimpri) leading towards agricultural lands of gat No.297, 300, and 308 situated at village Adgaon, Tq. & District Aurangabad. Pursuant to the applications submitted by the respondent nos. 5 to 7 as aforesaid, initially Naib Tahsildar, Aurangabad allowed said application by order dated 22.8.2014 and directed the petitioners herein to remove the encroachment and release old bullock cart way. Being aggrieved and dissatisfied by the said judgment and order dated 22.8.2014, petitioners filed revision petition No.10/2014 before the Additional Collector, Aurangabad, challenging the legality and sustainability of the said order passed by the Nayab Tahsildar, Aurangabad. Learned Additional Collector, Aurangabad, by order dated 27.2.2015 partly allowed said revision petition and quashed and set aside the order passed by Naib Tahsildar dated 22.8.2014 and remitted the matter to Tahsildar, Aurangabad directing re-inquiry into the

matter and take a decision afresh after extending opportunities to the respective parties. Thereafter, Tahsildar, by the impugned order allowed said application filed by the respondent nos. 5 to 7 herein and the Additional Collector, Aurangabad has confirmed the said order. Hence, this writ petition.

4. Learned counsel for the petitioners submits that, after lapse of 46 years, respondent nos. 5 to 7 herein moved an application under section 5 of the Mamlatdar Court's Act before the Tahsildar, Aurangabad intentionally to harras the present petitioners. Petitioners are the owners in possession of the agricultural land bearing gat nos.301, 300, 307 and 311 respectively situated at village Adgaon, Tq. and District Aurangabad. In the year 1969, without taking recourse to the statutory provisions under the Land Acquisition Act, the Government of Maharashtra had acquired the agricultural land of the petitioners from the gat numbers 297, 300, 301 and 307 and constructed a new tar way i.e. Adgaon to Pimpri (East-West). Since, 1969, all the farmers as well as the petitioners and

respondents are using said new tar way as an access to the respective fields. Learned counsel submits that, on perusal of the village map as well as toch map prepared and issued by the Deputy Superintendent of Land Records, Aurangabad, it is manifest that there is no way at all from the agricultural land belonging to the petitioners to access the land gat nos. 297, 300 and 308 as claimed by respondent nos. 5 to 7 in their application. Learned counsel submits that, no cause of action arose to file such an application and as per the provisions of Mamlatdar Court's Act, application is required to be submitted within six months from the date on which the cause of action arose. Learned counsel submits that, after remand, on 20.5.2015, respondent No.3 Tahsildar personally visited the spot and prepared spot inspection report to find out actual position to resolve the controversy between the parties. It transpires from the spot inspection report that, tar road is available as an access to gat no.308 situated at village Adgaon. In spite of that, respondents have prayed to open the old way which is not in existence since 45 years. Learned counsel submits that, distance between

old way and tar way is near about 20 to 30 feet and both way passes through the agricultural land of the petitioners. In view of the same, the petitioners face difficulty to cultivate the land. Learned counsel submits that, even in the sale deed executed by one of the farmer of gat no.300, on 20.1.2011 in the four boundaries mentioned therein, the aforesaid old cart way as claimed by the respondents herein is not shown. However, the authorities below have not considered the facts as stated above and allowed the application.

5. Learned counsel for respondent nos. 5 to 7 submits that, respondent nos. 5 to 7 are the owners of land gat nos.279, 300 and 308 and towards northern side of their land, there is old bullock cart road which is in existence since more than 50 years. Learned counsel submits that, four months prior to filing of the application, petitioners herein obstructed the same way and as such, respondents no. 5 to 7 constrained to approach the Tahsildar by filing an application under section 5 of the Mamlatdar Court's Act. Learned counsel submits that, said old cart way is shown in the

village map as well as in the Toch map. The cart way in dispute is actually an independent road and has no concern with the land of the petitioners. The learned counsel submits that, distance between old bullock cart road and new tar road is nearly about 300 to 500 feet and the petitioners for the first time raised ground before this Court that distance is only 20 feet. Learned counsel submits that, both the authorities below have, therefore, correctly appreciated the documentary evidence and allowed the applications filed by the respondents. The Tahsildar, Aurangabad in its impugned order has specifically observed that, as per the village map, there exists aforesaid bullock cart way and even from the spot inspection, found existence of the said old bullock cart way. The Tahsildar has also observed that said old bullock cart way does not pass through any-body's land. It has been specifically observed by the Tahsildar that, though, new tar way is being used for access to the Market Place and Taluka, the old cart way is also required as an access to the lands of respondent nos. 5 to 7. Learned counsel submits that, there is no substance in this writ petition

and writ petition is thus liable to be dismissed.

6. On careful perusal of the village map and toch map, it appears that, the disputed cart way is in existence since long i.e. more than 50 years. Though, in the spot inspection panchnama dated 20.5.2015, it has been mentioned that, tar road can be used as an access to the land gat no.308, the learned Tahsildar has recorded his observation that the petitioners have illegally obstructed the old cart way. Learned Tahsildar has specifically observed in his impugned order that the old cart way has been shown in the village map independently and said cart way does not pass through anybody's land. Learned Tahsildar after inspecting the spot specifically observed in his impugned order that, disputed old cart way is essential as an access to respondents land.

7. It is thus clear that, inspite of the tar way, Tahsildar, Aurangabad has recorded finding after visiting the spot that, old cart way is in existence since long and said cart way is also shown in the village map

as well as toch map. The Tahsildar has also recorded specific finding that, said disputed old cart way is also required to have an access to the land of respondent nos. 5 to 7. Petitioners for the first time have raised the ground that, there is hardly a distance of 20-25 feet in between new tar way and disputed cart way. It is submitted on behalf of respondent nos. 5 to 7 that there is considerable distance between these two roads. Merely because the tar way has been constructed way back in the year 1969, the old cart way which is existence for more than 50 years cannot be obstructed. Learned Tahsildar has also recorded a specific finding that, there is no likely hood of any loss being caused to the present petitioners. Thus, by exercising writ jurisdiction, I do not find any reason to interfere in the findings on facts. There is no material placed before me to indicate that, the impugned orders are arbitrary and contrary to the documentary evidence placed before the authorities. There is no substance in the writ petition. Hence, following order.

ORDER

1. Writ Petition is hereby dismissed.
2. In the circumstances, there shall be no order as to costs.

(V.K. JADHAV, J.)

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