

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

WRIT PETITION NO. 2270 OF 2015

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DHUDKU SANDU SAPKALE
VERSUS
STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioners : Mr. Shinde Chandrakant K.
AGP for Respondents: Mr. S N Kendre
Advocate for Respondents 4,5 : Mr Patil Ujwal Subhash

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CORAM : V.K. JADHAV, J.
Dated: January 08, 2018

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PER COURT :-

1. Heard finally with consent at admission stage.
2. Being aggrieved by the order passed by the Tahsildar, Mamlatdar, Yawal dated 12.2.2014 in Wahiwat SR/31/2013 under section 5 of the Mamlatdar Court's Act and confirmed by the S.D.O. in Revision No. 05/2014 by order dated 31.1.2015, the original opponent no.1 has approached this Court by filing present writ petition.
3. Brief facts, giving rise to the present writ petition are as follows :-

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a] Respondent nos. 4 to 6 herein had filed an application before the Tahsildar alleging therein that customary way existed on the northern side boundary of gat no.192/1 and southern side boundary of gat no.186 proceeding towards land gat no.189/1 and 189/2 owned and possessed by them has been closed by the petitioner herein on 30.7.2013 and prayed for removal of the obstruction or impediment in the use of the said way under section 5 of the Mamlatdar's Courts Act. The Tahsildar, Yawal had visited the site and drawn a rough map of the location. He also recorded the statements of the parties and by order dated 12.2.2014 directed the petitioner herein to remove the obstruction/impediment caused by him in the use and enjoyment of a customary way as detailed above. Being aggrieved by the same, the petitioner filed revision bearing Vahiwat Revision no.5/2014 under section 23(2) of the Mamlatdar's Courts Act before the learned S.D.O. Faijpur and the learned S.D.O. by order dated 31.1.2015 rejected the said revision application and confirmed the order passed by the Tahsildar. Hence, this writ petition.

4. Learned counsel for the petitioner submits that as per village map of village Girgadgaon Tq. Yawal District Jalgaon, there are no common boundaries of land gat no.192 and 186. Learned counsel submits that, entire case of respondent nos.2 to 4 stands on the footing that the petitioner has obstructed the suit way passes through common bandh of land gat no.192 and 186. Learned counsel for the petitioner submits that, there is no statutory compliance of the provisions of the act for filing the application before the Mamlatdar and as such, the application seeking relief under that Act is liable to be rejected.

5. Learned counsel appearing for respondent nos.4 and 5 submits that, the petitioner for the first time has raised the ground that there is no common boundary of land Gat no.192 and 186 and also that there is no statutory compliance of filing the application seeking the relief under the provisions of Mamlatdar's Courts act. Learned counsel submits that, both the authorities below have recorded concurrent findings about

impediment caused by the petitioner in the customary way and as such, no interference is required.

6. Though, the learned counsel for the petitioner has pointed out the map of village Girgadgaon and vehemently argued that there are no common boundary of land gat no.192 and 186, however, on perusal of the map drawn at the time of spot inspection referred by both the authorities below, it appears that the disputed way is shown as 'A, B, C and D' and passes through the bandh of land Gat no.186 and 192. Land gat no.189/2 and 189/1 belonging to respondent nos. 4 to 6 is towards eastern side of land gat no.192. It has been specifically observed during the course of the spot inspection that, the beginning of the customary way at point 'A' is still in existence. However, the way from 'B' to 'C' came to be destroyed and at point 'C' said way has been obstructed. It has been further observed that, at point No.'C-D' the customary way is in existence. On the basis of the spot inspection and the statement of the parties the learned Tahsildar has passed the impugned

order.

7. On careful perusal of the statement of the petitioner and also the impugned order passed by the authorities below, I find that the petitioner has raised the ground that there are no common boundary of land gat no.192 and 186 for the first time. Respondent Nos 13 and 14 herein/original opponent nos. 2 and 3 have stated before the learned Tahsildar that southern side of their land Gat no.186 there is land Gat no.192 and towards eastern side land Gat no.189 is situated. Original opponent no.3 has specifically stated in his application before the Tahsildar that there is a customary way towards northern side of land Gat no.192 leading towards land Gat no.189 and the same has been obstructed/closed by the present petitioner.

8. In view of the above, I do not find any substance in the submissions made on behalf of the petitioner for the first time before this court that there are no common boundaries of land Gat no.192 and 186.

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9. In view of the above discussion, I find no substance in this writ petition. Both the authorities below have rightly passed the order. I find no fault in the order. 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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