

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

WRIT PETITION No. 7083 of 2015

1. Bhimrao S/o Namdeo Patil, age major
2. Vijay S/o Bhimrao Patil, age 44 years
3. Gurudas S/o Bhimrao Patil, age 41 years

All agriculturists by occupation and
R/o Dangurne Taluka Sindkheda District Dhule

...Petitioners

VERSUS

1. The State of Maharashtra
Through : Government Pleader,
High Court of Bombay, Bench at Aurangabad.
2. The Sub-Divisional Officer,
Shirpur Taluka Shirpur District Dhule
3. The Tahsildar,
Sindkheda Taluka Sindkheda District Dhule
4. Ravindra S/o Pralhad Patil, age major
5. Nandlal S/o Vitthal Patil, age major
6. Vasant S/o Bhaurao Patil, age major
7. Bhaskar S/o Budha Patil, age major

Nos. 4 to 7 agriculturists by occupation and
R/o Dangurne Taluka Sindkheda District Dhule

...Respondents

Mrs. M.A. Kulkarni, Advocate for petitioners

Mr S.N. Kendre, Asstt. Govt. Pleader for respondents No. 1 to 3

Mr S.S. Patil, Advocate for respondents No. 4 to 7

CORAM : SUNIL P. DESHMUKH, J.

DATE : 8th October, 2018

ORAL JUDGMENT:

1. Rule. Rule made returnable forthwith. Heard learned counsel for the parties by consent finally.

2. Petitioners propose to challenge the concurrent orders passed hitherto under the *Mamlatdar's* Court Act, 1906 under section 5 and under section 23 passed by Tahsildar and the Revisional Authority, respectively, granting and maintaining the right of way.

3. The gist of contentions on behalf of petitioners is that while unauthorizedly right of way is being claimed through *Nala*, which is a natural water course, cannot be a way and thus the *Mamlatdar* under section 5 would not be empowered to grant the relief. Additionally, it is being purportedly claimed, what is being given under the orders, is a new road to respondents No. 4 to 7. It is further being submitted that taking disadvantage of such an order, damage is being caused to the field of petitioners.

4. Learned counsel Mr. Patil for respondents contends that respondents No. 4 to 7 after a long run battle, have been successful in vindicating their claimed right of way. He submits that revisional authority in first round had remanded the matter for reconsideration afresh by *Mamlatdar* and thereafter

proceedings have taken place in presence of petitioners. Petitioners attempt to reserve right of expanded way to themselves. He submits that two authorities concurrently have considered that concerned respondents have right of way and the same had been disturbed under activities of petitioners. He particularly submits that there is no dispute about fact that there is *Nala*. Learned counsel further points out the contention on behalf of petitioners is that respondents have right of way through some other *Nala*. In such a case, according to him, petitioners cannot raise a new ground which has hitherto had not been taken that *Nala* cannot be used as way. He, therefore, submits that no indulgence to the request under the writ petition be given.

5. Perusal of the orders passed one dated 15th July, 2013 by the *Mamlatdar* and other dated 23rd April, 2015 by the revisional authority indicates that according to prevalent procedure and practice, claims had been investigated by visiting the spot, drawing *panchnama* and other relevant documents and, particularly, that there appears to have been some settlement reduced into writing between the parties. The authorities have found that the respondents had right of way through water course (*Nala*) to have access to their field through field Gats No.

264/1 and 264/2 from very long time and to use the same as cart way and the same had been obstructed by petitioners. After remanding the matter, Circle Officer had investigated into the matter and has submitted report. Spot had been inspected in presence of both parties and surrounding agriculturists whereupon he found that the respondents have customary way to have access to their fields from the stream going through lands Gat No. 264/1 and 264/2 and accordingly *panchnama* has been drawn. The revisional authority has also noted, Tahsildar while had visited the spot, police had been called in order to avoid untoward incident.

6. In the circumstances, it emerges that respondents have been enjoying the customary right of way as claimed by them in application. Having regard to section 5(2) of the *Mamlatdar's Court Act*, the contention on behalf of petitioners that *Nala* can seldom be used and respondents No. 4 to 7 have right to use some other way, lose out in having any significance, and also it may have to be noted that *Mamlatdar* is empowered to protect customary right of way, the contentions of petitioners do not appear to carry any substance. The writ petition, as such, is not being entertained and is dismissed.

7. Rule discharged.

8. Learned counsel for petitioners submits that this order may not be deemed to be an impediment in adopting other recourses, particularly of a suit, according to law. If other recourses are available, this order shall not be deemed to be an impediment.

(SUNIL P. DESHMUKH)
JUDGE.

Madkar