

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.6619 OF 2016

Abarao Dhondiba Wadekar and another ...Petitioners....

Versus

The Additional Collector, (Revenue),
Aurangabad and others. ...Respondents...

Advocate for Petitioners : Mr. Gore Ravindra Vitthal
AGP for Respondents 1,2 : Mr. S W Munde
Advocate for Respondent 3 : Adv Ade Ravindra B.

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CORAM : N.M. JAMDAR, J.

Dated: December 05, 2018

ORAL ORDER :-

Heard learned counsel for the parties.

2. The petitioners have challenged the order passed by the Deputy Collector, Aurangabad dated 23 May 2016 whereby the revision filed by the respondent no.3/applicant was allowed and the petitioner was directed to remove the obstruction to the road.
3. The respondent no.3 filed an application to the Tahsildar,

Phulambri on 29 July 2013. It was the contention of the respondent no.3/applicant that he had purchased the property at village Padali and till some time, no obstruction was raised for his access to the land as well as taking the bullock cart. He complained that the petitioners had obstructed his pathway which obstruction should be removed. He stated that from 29 July 2013 the path way was obstructed.

4. The proceedings were once remanded by the Deputy Collector to the Tahsildar. The Tahsildar, on remand, relied upon the spot panchnama of 22 April 2015 and observed that there was no such regular path way. The Tahsildar thereafter partly allowed the application and stated that the respondent/applicant should use the boundary to approach the field. Being aggrieved, the respondent/applicant filed a revision before the Deputy Collector. The Deputy Collector observed that the Tahsildar could not have directed opening of a new road, when it was never prayed and set aside the order passed by the Tahsildar allowing the application and directed the petitioners to remove the obstruction.

5. The order passed by the revisional authority shows that the revisional authority has taken note of a panchnama of 26 September 2013. It is the contention of the respondent/applicant that there existed a road, which was obstructed, while it is the contention

of the petitioners that there was no such road in existence. Learned counsel for the petitioners submitted that the petitioners have no objection, if the respondents/applicants uses the road as granted by the Tahsildar.

6. The fact whether there existed a road which was obstructed, is a question of fact and is not possible under Article 227 of the Constitution of India to re-appreciate the evidence to come on a definitive factual findings. This exercise will have to be done by the authorities under the Act. In this context, it is to be noted that the revisional authority has only referred to the panchnama of the year 2013 and there is no independent finding recorded. While recording this finding, the Revisional Authority has omitted from consideration the spot panchnama of 22 April 2015 on which the Tahsildar has placed reliance. There is no discussion on this spot inspection at all. The revisional authority has not held that this spot inspection is incorrect. Learned counsel for respondents/applicants sought to contend that there is one more panchnama, which shows a different position. Then it is more the reason that the proceedings will have to be sent to the Deputy Collector to record a definitive finding.

7. The order passed by the Revisional Authority is set aside. The revision proceedings stand restored. The Deputy Collector will

decide the revision on its own merits. It is informed that, the order passed by the Deputy Collector on 23 May 2016 is not implemented as on date. Same position to continue till the disposal of the proceedings before the Deputy Collector. Parties will appear before the Deputy Collector on 19 December 2018, wherein the Deputy Collector will give further dates. The Deputy Collector will make an endeavor to dispose of the revision within a period of eight weeks from the appearance of the parties before it.

8. It is clarified that, the observations in this order are not a reflection on the merits of the rival contentions, but are made to emphasis the need to carry out a fresh enquiry.

(N.M. Jamdar, J.)

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