

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

929 WRIT PETITION NO. 10027 OF 2017

SINDHUBAI TARACHAND PATIL AND OTHERS
VERSUS
PRATAP LAHU PATIL

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Advocate for Petitioners : Mr. Mangesh G. Patil.

Advocate for Respondent No.1 : Mr. Sandesh R. Patil.

AGP for Respondent Nos.2 to 4 : Mr. S. P. Tiwari.

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CORAM : **V. K. JADHAV, J.**

DATE : 30th January, 2018.

ORDER:

. Heard finally with consent at admission stage.

2 Being aggrieved by the order dated 11th April, 2017 passed by the SDO, Amalner, the original Respondents approached to this Court by filing the present writ petition.

3 Brief facts giving rise to the present writ petition are as follows:

The Respondent has filed an application before the Tahsildar, Chopda under Section 5 of the Mamlatdar's Courts Act, 1906 against the Petitioners / original Respondents. According to the Respondent, there is a way from the land Gat No.288/1 owned and possessed by

him passing through the land Gat Nos.316, 315, 314 and 313 respectively and the said way is being used by all the adjacent owners. It has been alleged in the said application that the Petitioners are trying to obstruct the Respondent from using the said way. In response to the notice issued by the Tahsildar, the Petitioners put their appearance in the said proceedings and filed their detailed reply. The Petitioners herein have strongly resisted the said application and the allegations made therein. After hearing both the parties and after carrying out the spot inspection, by order dated 9th March, 2016, the learned Tahsildar, Chopda has rejected the application filed by the Respondent. Being aggrieved by the same, the Respondent has preferred R.T.S. Appeal No.32 of 2016 before the SDO, Amalner and by the impugned order dated 11th April, 2017, the learned SDO has partly allowed the said revision and quashed and set aside the order passed by the Tahsildar dated 9th March, 2016 and remanded the matter for deciding the same afresh on merits. Hence, this writ petition.

4 The learned counsel for Petitioners submits that there is a tar road towards the eastern side of the land Gat No.288 owned and possessed by the Respondent. The said tar road is adjacent to the land Gat No.288. The learned Tahsildar has carried out the spot

inspection and also drawn a map wherein it has been specifically observed that there is no Vahivat of way on the common Bandh of land Gat No.313/2 and Gat No.314. Even the learned Tahsildar has also observed in the spot inspection that there are no signs of old way as claimed by the Respondent. The learned counsel submits that the Tahsildar has also observed in his order that there is a tar road available to the Respondent, which is adjacent to his land and as such, the way as claimed by the Respondent, which is not in existence, cannot be created at his instance. The learned counsel submits that on the backdrop of these observations made by the learned Tahsildar in his order, the Respondent herein for the first time has raised the ground in the revision that the said tar road situated towards eastern side of the land of Respondent, is at lower level approximately at the depth of 15 to 20 feet and as such, the said road cannot be used conveniently for any purpose as an access to the land of the Respondent. The learned counsel submits that the so-called depth is not at all observed during the course of inspection of spot and even though without there being any pleading in the original application, the revisional authority has remanded the matter to the Tahsildar to make further inquiry into the said ground. The learned counsel submits that the impugned order is illegal, improper and incorrect and the same is

liable to be quashed and set aside. The learned counsel also submits that though the revision has been provided against the order of the Tahsildar, the Respondent herein has preferred an appeal, which was not maintainable and the learned SDO should have rejected the said appeal on this ground alone as not maintainable.

5 The learned counsel for Respondent submits that the Respondent has approached the learned Tahsildar by filing the application under Section 5 of the Mamlatdar's Court Act with a specific pleading that there is a tar road towards the eastern side of his land. The Respondent has specifically pleaded in his original application that he has purchased the land from one Mr. Baliram Patil under the registered sale-deed and his vendor Baliram Patil was using the said way since long prior to the execution of the sale-deed in favour of the Respondent. The learned counsel submits that the said disputed way passes on the Bandh of the land Gat Nos.314, 315 and 316 at one side i.e. southern side and Gat No.312, 313/2, 313 and 313/1A from the northern side. There is a Mangalur to Bhokri Rasta towards the western side, which also goes to village Mangalur. The learned counsel submits that this is the only access to the land of the Respondent. The learned counsel submits that the Tahsildar since

observed that a tar road, which is adjacent to the land of the Respondent, is available to him for going to village Mangalur, the Respondent though has not specially pleaded in his application as there was no occasion arises to plead specifically in his regard, raised the ground before the revisional Court that the said tar road is at lower level having depth of 15 to 20 feet as compare to the land of the Respondent. The learned counsel submits that the revisional Court having considered the ground raised by the Respondent, rightly remanded the matter to the Tahsildar for further inquiry. In view of the same, no interference is required in the impugned order. The writ petition is liable to be dismissed. The learned counsel also submits that though the Respondent inadvertently has preferred an appeal, however, the authority has treated the said appeal as revision and accordingly decided the same.

6 On careful perusal of the contents of the original application, it appears that there is no specific pleading about the level of the road towards eastern side of Respondent's land and no specific contention has been raised that the Respondent's land is at the upper side and the said tar road is at lower side and as such, it is inconvenient as an access to the land of the Respondent. In absence

of any pleading to that effect, the Respondent's contention could have been considered, had there been any specific observation to that effect in the inspection report. On careful perusal of the spot inspection carried out by the learned Tahsildar, I do not find that the learned Tahsildar has mentioned the said level in the spot inspection report. Had there been any such difference in the level of the land owned and possessed by the Respondent and the tar road, the Tahsildar would have certainly taken the note of it. In absence of any such observation in the spot inspection, the Respondent herein for the first time has raised the ground in the revision before the learned SDO and the learned SDO has considered the said ground and remanded the matter. On careful perusal of the order passed by the Tahsildar, it appears that the Tahsildar in his inspection report and also in the order specially observed that no such way is in existence and even there are no old signs indicating the existence of said way as claimed by the Respondent. In view of the same, the impugned order is improper, incorrect and illegal and certainly calls for interference. There is no reason to remand the matter. The learned SDO has not given any other reason to quash and set aside the order passed by the Tahsildar. On the other hand, it appears from the impugned order that the learned SDO has not touched the findings recorded by the Tahsildar

that the said disputed way is not in existence. In view of the same, this writ petition deserves to be allowed. Hence, the following order:

ORDER

- I. The writ petition is hereby allowed. No costs.
- II. The order dated 11th April, 2017 passed by the SDO, Amalner in R.T.S. Appeal No.32 of 2016, is hereby quashed and set aside.
- III. The order dated 9th March, 2016 passed by the Tahsildar, Chopda in Vahivat No./Case/SR/12/2014 stands confirmed.
- IV. The writ petition is accordingly disposed of.

[V. K. JADHAV, J.]

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