

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4726 OF 2017

DILIP KRISHNA PATIL AND OTHERS
VERSUS
SUB DIVISIONAL OFFICER JALGAON AND OTHERS

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Advocate for Petitioners : Mr. Pradip R. Patil
AGP for Respondents 1 and 2: Mr. A.V. Deshmukh
Advocate for Respondents 3 and 4 : Mr. L.V. Sangit

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CORAM : V. K. JADHAV, J.
DATED : 9th JANUARY, 2018

PER COURT:-

1. Being aggrieved by the order dated 07.07.2016 passed by the Sub Divisional Officer in Wahiwat Revision No. 12 of 2016 under the provisions of Mamlatdar Courts Act 1906, the original opponents approached this court by filing present writ petition.

2. Learned counsel for the petitioners submits that respondent Nos. 3 and 4 herein filed an application under section 5 of the Mamlatdar Courts Act 1906 before the Tahsildar, Chalisgaon contending therein that they are owners in possession of land Gat No. 37 and 36, respectively, and present petitioners are in possession of land Gat No. 53/1, 53/2A1, 53/2A3 and 53/2A2. It has also been contended in the said application that the suit cart way passes through the bandh of land of petitioners/original opponents

and the petitioners-opponents have obstructed the said way. The learned Tahsildar, has carried out the spot inspection on 26.11.2014 and observed that though there is cart way to some extent near to the land Gat Nos. 53 and 53/2A/3 and 53/2A/2 thereafter, the foot way appears on the bandh of land Gat No. 53/2A/1 and 53/1 and there are standing mango trees and jujube (Bor) trees, aged 12 years and 25 to 30 years, respectively, on the said Bandh. It has also been specifically noted in the spot inspection that the breadth of the said bandh is 2.5 to 3 feet. The learned Tahsildar, has therefore, observed that there is no cart way in existence as claimed by respondent Nos. 3 and 4 and the same is not probable due to the standing old trees on the Bandh. Learned counsel submits that though the learned Tahsildar has rejected the application, learned Sub Divisional Officer has partly allowed Revision No. 12 of 2016 and remitted the matter back to the Tahsildar for no reason. The learned counsel submits that the Sub Divisional Officer has made incorrect observations in the impugned order. Even though the Tahsildar has carried out spot inspection and the same is also not disputed by respondent Nos. 3 and 4 original applicants, learned Sub Divisional Officer has observed that the Tahsildar has not carried out spot inspection as contemplated under the provisions of section 19(2) of Mamlatdar Courts Act 1906. Learned counsel submits that the Sub Divisional Officer has not at all considered the standing

treess, as noted in the spot inspection by the Tahsildar. Even the learned Sub Divisional Officer has not given reference to the standing trees. On the other hand, though it was nobody's case, the Sub Divisional Officer has concluded that the suit way has been destroyed by the petitioners-original opponents. Learned counsel submits that thus the remand order is wholly unwarranted and uncalled for. The learned S.D.O. ought to have decided the matter on its own merits.

4. Learned counsel for respondent Nos.3 and 4 original applicants submits that the learned Sub Divisional Officer after considering the evidence on record and after going through the record and proceedings, specifically observed that the learned Tahsildar has failed to visit the spot and also came to the conclusion that the petitioners-original opponents have destroyed the suit way which passes through the Bandh of their agricultural lands.

5. I have also heard learned A.G.P. for respondent Nos. 1 and 2.

6. On perusal of order passed by the learned Tahsildar, it appears that the learned Tahsildar on 26.11.2014 has visited the spot and also carried out the panchnama. Even respondent Nos.3 and 4 original applicants in the appeal memo filed before the Sub

Divisional Officer, have specifically referred the spot visit of Tahsildar and the panchnama drawn by him during his spot visit. Even respondent Nos. 3 and 4-original applicants have also signed the panchnama drawn by the Tahsildar at the time of his spot visit. It further appears from the impugned order passed by the Sub Divisional Officer that the learned Sub Divisional Officer has not at all given reference to the standing trees as observed by the Tahsildar during the course of spot inspection. Learned Tahsildar has specifically observed that because of old standing trees on the Bandh, the contention of original applicants about existence of suit cart way cannot be accepted. However, learned Sub Divisional Officer has not considered the said aspect and remanded the matter by making incorrect observations in the impugned order. It thus appears that the impugned order is unwarranted and uncalled for. The learned Sub Divisional officer has to decide the revision application on its own merits. Hence, the following order:-

O R D E R

- I. Writ petition is hereby partly allowed. No costs.
- II. The judgment and order dated 07.07.2016 passed by the Sub Divisional Officer, Chalisgaon in Wahiwat Revision No. 12 of 2016 is hereby quashed and set aside.

III. The matter is remanded back to the Sub Divisional Officer with following directions:-

- a) The Sub Divisional Officer to restore the Wahiwat Revision No. 12 of 2016 to its original number.
- b) The parties shall appear before the learned Sub Divisional Officer, Chalisgaon on 06.02.2018 and the learned Sub Divisional Officer shall decide the said revision afresh after giving an opportunity of being heard to both the parties, on its own merits, without getting prejudiced by the observations made in this order.

IV) The writ petition is accordingly disposed of.

(V. K. JADHAV, J.)

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