

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.379 OF 2018
(Pravin Vinayak Patil and another Vs. The State of Maharashtra and
others)

Mr.N.V.Gaware, Advocate for the petitioners.
Mr.V.S.Badakh, AGP for respondent Nos.1 to 3.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 10/01/2018

PER COURT :

1. The petitioners are aggrieved by the order dated 24/03/2017 passed by the Tahsildar u/s 5(2) of the Mamlatdar's Courts Act, 1906 and the judgment of the Revisional Authority dated 14/11/2017 u/s 23(2) of the said Act

2. Learned Advocate for the petitioners has strenuously criticized the impugned orders. He primarily submits that the path, which is claimed to be existing, is alleged to be a customary path and hence the moment the dispute as to whether it is a recently created path or a customary path is raised, the parties have to be relegated to the Civil Court for consideration of the said issue. He relies upon paragraph No.11 of the judgment of this Court in the matter of Union of India and others Vs. Maruti Madhav Kerulkar and others, 2003(2)

Bom.C.R. 177.

3. It is then contended that the inspection of the spot and the panchanama are also defective as a path is shown to be available besides a *Nala*. The path was never in existence earlier. It has been created at the behest of the State Authorities when the laying of a pipeline had resulted into the creation of such a road.

4. Learned Advocate has drawn my attention to the details of the impugned judgment of the Tahsildar. In so far as the impugned judgment delivered by the Revisional Authority is concerned, learned Advocate, while strenuously criticizing the same, submits that the Revisional Authority has not applied its mind to the matter. Reasons are not set out and hence the impugned order deserves to be quashed and set aside.

5. Notwithstanding the submissions of the learned Advocate as above, it appears from the record, that has been referred to by the Tahsildar while dealing with the wahiwat case that the spot inspection indicated that the petitioner was creating obstruction by resorting to certain digging work. The spot inspection and the panchnama signed by the Panchas and certain villagers indicates

that the path mentioned in the panchnama and the spot inspection was used by the said villagers and the dispute arose only after the petitioner started creating obstruction in the said path for self-serving purposes.

6. In so far as the contention that the Revisional Authority has not applied its mind to the case is concerned, it cannot be ignored that the order of the Tahsildar is well reasoned. While considering the illegality of the order, the Revisional Authority has gone through the record available. He has perused the record and has also considered the spot inspection report as well as the panchnama and the map that was placed before him. After considering these documents, he concludes that the reasons set out by the Tahsildar while allowing the wahiwat case, do not appear to be perverse or erroneous.

7. It is always a matter of debate as to how the order can be worded by the concerned Revenue Authorities. If it appears to the Court that the order under challenge does not reflect any application of mind and does not indicate that any record has been perused or considered, such an order can surely be set aside. The impugned order delivered by the Revisional Authority runs into 3 pages in

which he has considered the contentions of the rival parties, has gone through the statements recorded, the affidavits filed and while drawing his conclusions, he has noted that the map of the spot inspection, the panchanama and the spot inspection report clearly indicate that the reasons for which the Tahsildar has allowed the Wahiwat Case, cannot be faulted

8. In so far as the contention of the petitioners is concerned that whether the path is a customary path or not, needs to be referred to the Civil Court, I find that the facts emerging in the judgment of the Union of India case (supra) are quite different and distinguishable. The matter had already reached the Civil Judge, S.D. at the behest of one of the litigating sides. The certificate issued by the Tahsildar was not placed before the Trial Court at the relevant time. It was in these facts that this Court concluded that the issue as to whether a path is a customary path or not can be considered by the Civil Court exercising its jurisdiction in a civil suit. So also, I do not find from Section 5 of the Mamlatdar's Courts Act that when an issue of whether a path was already in existence so as to be termed as a customary path or not, the matter and the parties have to be relegated to the Civil Court for adjudication. In the absence of any such provision, the Court cannot draw such a conclusion.

9. Considering the above, this petition, being devoid of merit, is therefore, dismissed.

(RAVINDRA V. GHUGE, J.)