

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.8058 OF 2018

Chandrabhan Baburao Bhavar & Anr. .. Petitioners
Vs.
Chindhu Shankar Bodake & Anr. .. Respondents

Mr.Rameshwar Gite for the petitioners.
Mr.Tejas Dande a/w Mr.Bharat Godhavi, Mr.Krupanshu N., Mr.Nirjan Bhavke i/by M/s.Tejas Dande & Associates for the respondent nos.1 to 3 & 5 to 8(a).
Mr.S.D. Rayrikar, AGP for the respondent nos.19 & 20.

CORAM : R.D. DHANUKA, J.
DATE : 7th August 2018

P.C.:

By this petition filed under Article 227 of the Constitution of India, the petitioners have impugned the order dated 5th July 2018 passed by the learned Additional Collector, Nashik in Wahivat Revision No.01/2018 and also the order dated 30th June 2016 passed by the learned Tahsildar in Easementary Suit No.12/2015.

2. The respondent nos.1 to 3 & 5 to 8(a) had filed an application under Section 5 of the Mamlatdars Court Act, 1906 for removal of obstruction caused by the petitioners to the road available to the respondents for last about 100-150 years. The respondents have also applied for drawing a panchnama before the learned Tahsildar. Panchnama was drawn on 25th February 2016 in presence of both the parties. The said panchnama and other material was produced on record.

The learned Tahsildar has passed an order allowing the application filed by the respondents for removal of obstructions from the existing road. Learned Additional Collector dismissed the revision application filed by the petitioners. Being aggrieved by those two orders, the petitioners have impugned those orders in this writ petition under Article 227 of the Constitution of India.

3. Mr.Gite, learned counsel for the petitioners invited my attention to some of the exhibits annexed to the petition including the panchnamas. He submits that the entire order passed by the learned Tahsildar is based on panchnama and not on the other evidence. He invited my attention to paragraph 5 of the impugned order passed by the learned Tahsildar and would submit that the learned Tahsildar has in fact passed an order for providing a new road from the existing road from the land of the petitioners which is not permissible under Section 5 of the Mamlatdars Court Act, 1906.

4. In so far as the order passed by the learned Additional Collector is concerned, it is submitted by the learned counsel for the petitioners that the learned Additional Collector also did not give an opportunity to the petitioners to lead any evidence. He submits that under Section 5 of the Mamlatdars Court Act, 1906, the application for access has to be tried as a suit and all the provisions of the Indian Evidence Act, 1872 thus would apply. However, no such opportunity was given by the learned Tahsildar or by the learned Additional Collector.

5. Mr.Dande, learned counsel for the respondent nos.1 to 3 & 5 to 8(a), on the other hand, invited my attention to the panchnama dated

25th February 2016 and would submit that the said panchnama was drawn to find out the road passing between the land of the petitioners. The said panchnama was drawn by the Panchas in presence of both the parties. It was clearly noticed that there was an access available to his clients from the land of the petitioners and was obstructed by the petitioners.

6. In so far as the submission of the learned counsel for the petitioners that no opportunity to lead evidence was rendered to the petitioners before the learned Tahsildar is concerned, it is submitted that no such application was made for leading evidence before the learned Tahsildar or before the Additional Collector. He submits that in so far as the panchnama relied upon by the learned counsel for the petitioners is concerned, the said panchnama was only for the purpose of finding out any other road available to the contesting respondents or not. The findings rendered by none of the authorities being perverse cannot be interfered with by this Court under Article 227 of the Constitution of India.

7. In so far as the panchnama dated 27th August 2015 which is relied upon by the petitioners in support of the submission that two panchnamas were showing two different position of the road is concerned, a perusal of the panchnama dated 25th February 2016 clearly indicates that the purpose of the said panchnama was to find out as to whether any other road was available to the contesting respondents or not. It is not in dispute that these contesting respondents had applied for drawing a panchnama before the learned Tahsildar which application was granted and the panchnama was drawn in presence of both the parties.

8. A perusal of the panchnama dated 25th February 2016 annexed at Exhibit 'F' to the petition indicates that there was an access available to the contesting respondents which was obstructed by the petitioners. A perusal of the application No.12 of 2015 filed by the contesting respondents clearly indicates that the application was made for removal of obstruction under Section 5(2) of the Mamlatdars Court Act, 1906. The record further indicates that the petitioners did not make any application for leading any oral or documentary evidence. The learned Tahsildar thus was right in relying upon the second panchnama which is drawn in presence of both the parties. A perusal of the order passed by the learned Tahsildar indicates that the petitioners had obstructed the access available to the contesting respondents by constructing a water tank.

9. In these circumstances, the learned Tahsildar as well as the Additional Collector are justified in passing the orders for removal of obstructions caused by the petitioners from the access which are available to contesting respondents. The findings rendered by both the authorities below being not perverse cannot be interfered with by this Court under Article 227 of the Constitution of India. The petition is devoid of merit and is accordingly dismissed. No order as to costs.

10. Application for continuation of the ad-interim relief granted by this Court is rejected. Parties to act on the authenticated copy of this order.

R.D. DHANUKA, J.