

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

WRIT PETITION NO. 2686 OF 2014

1. Abasaheb s/o Laxman Shinde,
Age: 41 years, Occu: Agril. /Service,
R/o. A-Wing, 607 Anita Vihar,
Lokhandwala Townwhip, Mhada,
Plot No.16, Akurdi Road, Kandiwali (E)
Mumbai-101.
2. Dhondabai w/o Laxman Shinde,
Age: 61 years, Occu: Agril.
R/o. Dhor Galli, Shrigonda,
Tq. Shrigonda, Dist. Ahmednagar.

...PETITIONERS.

Versus

1. The Sub-Divisional Officer,
Shrigodna-Parner, Division,
Ahmednagar.
2. The Tahsildar,
Shrigonda, Dist. Ahmednagar.
3. Ashok s/o Narayan Kalambe,
Age: 62 Years, Occu: Agril.
R/o Autewadi-Kokangaon Road,
Shrigonda, Tq. Shrigonda, Dist. Ahmednagar.
4. Rama s/o Maruti Shinde,
Age: 61 years, Occu: Agril.
R/o. Dhorgalli, Shrigonda,
Tq. Shrigonda, Dist. Ahmednagar.
5. Bhausahab s/o Rama Shinde,
Age: 38 years, Occu: Agril.
R/o. Dhorgalli, Shrigonda,
Tq. Shrigonda, Dist. Ahmednagar.

...RESPONDENTS.

Mr. V.P. Latange, Advocate for Petitioners.

Mr. A.V. Deshmukh, AGP for Respondent Nos.1 and 2.

Mr. P.N. Khedkar, Advocate for Respondent Nos.3

CORAM : T.V. NALAWADE, J.
DATED : 14/02/2019

ORAL JUDGMENT :

1) Rule. Rule made returnable forthwith. By consent, heard both the sides for final disposal.

2) The petition is filed to challenge the order made by the learned Sub Divisional Officer (S.D.O.), Shrigonda-Parner Division in Revision No. 19/2013 and also the order made by the learned Tahsildar, Shrigonda District Ahmednagar in Rasta Case No. 29/2012. The submissions made show that the petitioner is the owner of land Gat No. 1515. The land bearing Gat No. 1514 is adjacent to land Gat No. 1515 and one Bharat Shinde is owner of land Gat No. 1514. Under registered sale deed of the year 2010, Bharat sold 11 R. portion to present respondent No. 3. It appears that there was some construction of house in the portion of 11 R. and that is why respondent No. 3 purchased that portion from Bharat.

3) Present respondent No. 3 filed application before Tahsildar under provisions of Mamlatdar's Courts Act, 1906 and he requested Mamlatdar to make order to prevent present petitioner

from creating obstruction over the way, which according to respondent No. 3 was in existence over common Bandh situated between Gat Nos. 1514 and 1515. He gave width of this Bandh as 10 ft. It appears that after making inspection which according to the petitioner was not done in the presence of petitioner as he is resident of Mumbai, the Tahsildar made order in favour of respondent No. 3. In the order made by Tahsildar, there is no specific description of the way or road and only on the basis of application made by the present respondent No. 3 under Mamlatdar's Courts Act, it can be inferred that he has given way having width of 10 ft. on a portion situated between land Gat Nos. 1514 and 1515. Naturally respondent No. 3 will be using some portion of Gat No. 1515 as a way.

4) At the time of making any order under Mamlatdar's Courts Act or declaring the way or for giving relief of injunction, it is necessary for the Mamlatdar first to ascertain the existing right. It can be said that only in the year 2010, the present respondent No. 3 purchased some portion of land Gat No. 1514 from vendor Bharat. The learned counsel for respondent No. 3 took this Court though agreement made with Bharat which is titled as 'Agreement for 99 Years'. In this document, there is mention that on the

portion situated between land of the vendor and land of Rama Shinde and Laxman Shinde, the present petitioners, there is a road and right to use that road is given to respondent No. 3. Even from this document, it cannot be said that the width of the said road is 10 ft. In any case, under such document or agreement made with the vendor, the rights of the others like owner of land Gat No. 1515 cannot be interfered with. The order is interfering with the rights of owner of Gat No. 1515. The Mamlatdar is expected to consider provisions of Maharashtra Land Revenue (Boundaries and Boundary Marks) Rules, 1969. In Rule 4, the width and height of the Bandh which needs to be maintained between two Gat numbers is given. The land owner is not expected to keep the width more than the said width. This circumstance is not at all considered by Mamlatdar. Only when the road is already in existence and it is established that it has been in use of the persons of that locality, the order of injunction can be given. Otherwise the common Bandhs can be used by farmers only as a foot-path and not as a cart way or for auto vehicle or for other conveyance. Due to all these circumstances, this Court holds that the order made by the learned Mamlatdar and the appellate authority cannot sustain in law. Both the orders are set aside. The matter is remanded back to the Mamlatdar to make fresh enquiry

and give opportunity to both the sides before passing any order. The petition is allowed and disposed of in those terms. Rule is made absolute in those terms.

[T.V. NALAWADE, J.]

ssc/