

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

WRIT PETITION NO. 2808 OF 2014

RAJENDRA DHONDIBA MOTE AND ORS.
VS.
PANDURANG HARI BHANDWALKAR AND ORS.

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Advocate for petitioners : Mr. P.B. Shirsath
Advocate for respondent Nos. 1 to 3 : Mr. N.V. Gaware
AGP for respondent Nos. 4 & 5 : Mr. A.B. Chate

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

ORDER :

1. The proceeding is filed to challenge the order made by learned Sub Divisional Officer, Shrigonda-Parner Division, Ahmednagar in Revision Application (Rasta) No. 3/2013 and also the order made by the learned Tahsildar, Jamkhed in Rasta Case No. 26/2009. Both the sides are heard.

2. The submissions made and the record show that it is the contention of the present petitioner that he has filed Regular Civil Suit No. 208/2009 for relief of permanent injunction and that was in respect of the land Gat No. 820 and 814. It is his contention that only after filing of the suit, the present respondents, defendants of that suit filed proceeding under Mamlatdar's Court Act, 1906 for getting relief in respect of

common Bandh situated between land Gat No. 814 and 820. He had contended that the defendants were using common Bandh as foot path, but the plaintiff of the Regular Civil Suit and opponents of Rasta Case were preventing him from using the common Bandh as foot path. After making enquiry and after giving hearing to both the sides, the learned Tahsildar made order and directed the present petitioner to see that no obstruction is created in the enjoyment of the present respondents of the said common Bandh as foot path.

3. It is the contention of the petitioner that in view of the provisions of section 26 (2) of Mamlatdar's Courts Act, the Tahsildar ought not to have entertain the matter. He submitted that it was brought to the notice of Tahsildar that civil suit was pending and even application under section 10 of Civil Procedure Code was filed for staying the said proceeding which was filed before Mamlatdar. It is submitted that on the technical grounds itself the order needs to be quashed and set aside.

4. This Court has carefully gone through the provisions of Maharashtra Land Revenue (Boundaries and Boundary Marks) Rules 1969 and particularly Rule 4. The scheme of the Rules and

particularly, Rule 4 shows that boundary marks which include common Dhuras, created to demarcate the numbers given to the lands during survey cannot be destroyed or damaged by anybody including the owners of the adjacent lands. Even if a person is owner of two lands like Gat No. 814 and 820 and there is common Band between two lands, only because he is owner of the two lands, he is not entitled to destroy the common Bandh lying between the two lands. All the farmers of that area have customary right to use the common Bandh and unless that is done it will not be possible for any farmer to cultivate their respective lands.

5. The submission that civil suit was filed first in time and due to that the Mamlatdar/Tahsildar ought not to have entertain the matter is not acceptable. The civil suit was in respect of the area of land Gat Nos. 814 and 820 and it cannot be said that the plaintiff of that suit, petitioner was seeking injunction against the respondents particularly in respect of his entitlement to use the common Bandh as foot path. Thus, even if the injunction is granted by the Civil Court, that injunction cannot prevent anybody to use it as foot path. The width and the height of the common Bandh needs to be as per Rule 4 of

aforesaid Rules. Only because the Tahsildar has not made it clear that the width and height of the common Bandh will be necessarily as per Rule 4, this Court is making it clear that the respondents, plaintiffs before Mamlatdar will not be entitled to show that the width of the common Bandh is already more and they are entitled to get the enjoyment of the said width. Further, they can use that Bandh as foot path. In view of the aforesaid circumstances, this Court holds that there is no need of interference in the order. With these observations, the petition is disposed of.

[T.V. NALAWADE, J.]

ssc/