

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4852 OF 2018

BABAN S/O RANGNATH LAGAD AND OTHERS
VERSUS
THE SUB DIVISIONAL OFFICER, SHRIGONDA-PARNER DIVISION,
AHMEDNAGAR AND OTHERS

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Mr. R. R. Karpe, Advocate for the Petitioners
Mr. K. B. Jadhavar, AGP for Respondent Nos. 1 and 2
Mr. V. D. Hon, Senior Advocate i/by Mr. A. V. Hon, Advocate for
Respondent No.3
Mr. P. B. Vikhe, Advocate for Respondent No.5.

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CORAM : V. K. JADHAV, J.
DATED : 05th November, 2019

PER COURT:-

1. This Writ Petition is heard finally by consent at admission stage.
2. By this Writ Petition, the petitioners seek quashing and setting aside the impugned order dated 23.10.2017 passed by respondent no.2 - Tahsildar, Shrigonda in Rasta Case No. 47 of 2016 as well as the order dated 10.04.2018 passed by respondent no.1-Sub Divisional Officer, Shrigonda-Parner Division, Ahmednagar in Revision Application No. 211 of 2017.
3. Learned counsel for the petitioners submits that respondent no.3 had filed Rasta Case No. 47 of 2016 before the Tahsildar,

Shrigonda stating therein that the present petitioners have created obstructions on the 12 feet way/road which is in existence from the northern side boundary of land gat nos. 95 and 96 situated at Ghotvi, Taluka Shrigonda, District Ahmednagar. Learned counsel submits that the said 12 feet way/road leads to the Shrigonda-Surodi-Kolgaon tar road. Learned counsel submits that the prayers in the said Rasta Case explicitly make it clear that respondent no.3 has filed the same in respect of the 12 feet wide way/road from the western side *bandh* of gat nos. 95 and 96 and the relief has been sought in respect of restoration of the said road/way by removal of the obstructions. Learned counsel submits that it is part of record of Rasta Case No. 47 of 2016 that certain panchanamas came to be drawn in connection with the said case by respondent no.2 herein i.e. Tahsildar, Shrigonda. Respondent no.3/original applicant when realized that the panchanama and map drawn on 13.12.2016 by respondent no.2 - Tahsildar, Shrigonda are not supporting his case, very conveniently and after thought, contrary to the basic prayers in the said Rasta Case No. 47 of 2016, respondent no.3/original applicant after a long time on 05.04.2017, filed an application and thereby taken a totally contrary stand than the stand/averment originally taken in Rasta Case No. 47 of 2016. In the very

proceedings, respondent no.3 has filed this subsequent application thereby contending that at the time of conducting the earlier panchanama, his mental condition was not well and in fact respondent no.3/original applicant has prayed relief with regard to the existence of the said way/road from the northern boundary of land gat nos. 95 and 96 which would be an access to Shrigonda-Surodi-Kolgaon government road. Learned counsel submits that despite the fact that the subsequent application dated 05.04.2017 is wholly unsustainable and not maintainable, respondent no.2-Tahsildar, Shrigonda, pursuant to the said application, has issued notices on 12.06.2017 thereby scheduled the spot inspection on 20.06.2017 and again adjourned the same to 13.07.2017. Even in the said panchanama drawn on 13.07.2017, no specific conclusion has been drawn about existence of the road/way as claimed by respondent no.3/original petitioner. It has also been mentioned in the said panchanama that on the so called road towards the northern boundary of land gat nos. 95 and 96, certain standing trees are noted. Learned counsel submits that it is also part of record that the alternate road is available from the southern side of land gat nos. 95 and 96. Even the panchanama annexed to the proceedings supports the existence of the alternate way from the

southern side. Learned counsel submits that despite all these facts, respondent no.2, Tahsildar, Shrigonda by the impugned order dated 23.10.2017 has allowed the Rasta Case No. 47 of 2016. Learned counsel submits that Rasta Case No. 47 of 2016 is against the provisions of Section 5 of the Mamlatdar's Courts Act, 1906. Even the revisional court has also not considered the ground raised by the petitioners. Learned counsel submits that respondent no.3/original applicant has adopted the convenient stand while seeking relief under the provisions of the Mamlatdar's Courts Act, 1906. Thus, the Writ Petition deserves to be allowed by setting aside the impugned orders.

4. Learned senior counsel appearing for respondent no.3 submits that the orders passed by the authorities below are proper, correct and legal and call for no interference. So far as the original contentions raised in Rasta Case No. 47 of 2016 are concerned, on perusal of the map and the panchanama drawn by the authorities time to time, it is apparent that respondent no.3/original applicant has incorrectly contended about the existence of the 12 feet road/way from the western *bandh* of land gat nos. 95 and 96. Respondent no.3/original applicant has therefore rightly brought it

to the notice of the authorities and accordingly, the panchanamas came to be drawn thereafter. The panchanama dated 13.07.2017 unequivocally indicates the existence of the suit way as claimed by respondent no.3/original applicant. It has also been specifically mentioned in the said panchanama that the alternate road towards the southern side is abutting to the stream and the said road even if considered as an alternate road, practically it cannot be used especially in rainy season. Learned senior counsel submits that it is thus clear that if the alternate road is not available in the rainy season and also not convenient in other seasons, there will be no access road towards the land of respondent no.3/original applicant. Learned senior counsel submits that the 12 feet road towards the northern side of land gat nos. 95 and 96 is thus the only access road to Kolgaon-Shrigonda tar road. By order dated 31.08.2018, while dealing with the submissions about the alternate road available to respondent no.3/original applicant to approach his land for cultivation, this Court has directed the Tahsildar to visit the land of respondent no.3 and submit a report. By order dated 29.01.2019, even the Sub Divisional Officer, Shrigonda-Parner Division was also directed to inspect personally the site where such alternate road would be feasible to be used throughout the year

and even if the stream is full of flowing water. The said direction was given in continuation with the earlier order on the basis of which Tahsildar had conducted the panchanama on 05.09.2018 and the said panchanama along with sketch map is placed on record on page nos. 102 to 104. Learned senior counsel submits that in the panchanama drawn by the Tahsildar, so also in the spot inspection personally conducted by the Sub Divisional Officer and the affidavits submitted by both the authorities before this Court, it is clear that the alternate road as claimed by the petitioners is not feasible especially during rainy season when the rain water flows from the stream on the said road. Learned senior counsel submits that there is no substance in this Writ Petition and the same is thus liable to be dismissed.

5. Learned AGP submits that in terms of the order passed by this Court, Tahsildar, Shrigonda has carried out inspection on 05.09.2018 by giving notices to the concerned parties. As per the spot inspection, to the eastern side of land gat nos. 95, 96 and 97 the Shrigonda-Kolgaon tar road is situated. It has also been mentioned that the land of present petitioners bearing gat nos. 95, 96 and 97 is situated between the land of respondent no.3 and the

main road Shrigonda-Kolgaon. Learned AGP submits that though the petitioners are ready to give the east-west road to respondent no.3/original applicant from the southern side of this land, in view of the spot inspection carried out by the Tahsildar, Shrigonda, the said alternate road is not feasible. The Sub Divisional Officer has also personally inspected the spot on 07.02.2019 and filed his affidavit-in-reply. In his opinion also the road towards the southern side is not feasible and during the rainy season when the rain water flows from the stream on the road, the said road cannot be used for any purposes. Learned AGP thus submits that appropriate orders may be passed.

6. On going through the record and the panchanamas drawn by the authorities time to time and even the panchanama drawn under the directions of this Court by the Tahsildar, Shrigonda and so also the inspection personally carried out by the Sub Divisional Officer, it appears that the alternate road towards the southern side of land gat nos. 95 and 96 is not feasible. So far as the initial prayer in Rasta Case No. 47 of 2016 is concerned, considering the map placed on record, it is apparent that respondent no.3/original applicant has incorrectly contended about the said road. If the

alternate road towards the southern side of land gat nos. 95 and 96 is not feasible as is reported by the authorities, there will be no access road available to respondent no.3/original petitioner from his agricultural land to the Shrigonda-Kolgaon tar road. The said way/road towards the northern side of land gat nos. 95 and 96 is in existence on the *bandh* and during the panchanama dated 13.07.2017, the said road was found in existence till it reaches the house of brother of respondent no.3/original applicant and thereafter it has been converted into path way. It is not disputed that after the land of the brother of respondent no.3/original applicant from gat no.95, the land of petitioners is situated. Though certain standing trees are shown on the said *bandh*, however, there is no obstruction to the said road which is 12 feet in width passing through the said *bandh*. It is also not disputed that towards the eastern side of the land gat nos. 95, 96 and 97, the tar road Shrigonda-Kolgaon is situated. Thus, considering the entire aspect of the case, I proceed to pass the following order:

ORDER

The Writ Petition is hereby dismissed. No costs.

(V. K. JADHAV, J.)