

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.8332 OF 2018

1. Dinkar S/o Pandharinath Gagare,
Age : 65 years, Occu. Agril.,
R/o. Varwandi, Tal. Sangamner,
District Ahmednagar.
2. Ravsaheb S/o Yadav Gagare,
Age : 68 years, Occu. Agril.,
R/o. Varwandi, Tal. Sangamner,
District Ahmednagar.

... **Petitioners**

Versus

1. The State of Maharashtra,
Through its District Collector,
Ahmednagar.
2. The Sub Divisional Officer,
Sangamner Division, Sangamner,
District Ahmednagar.
3. The Tahsildar,
Sangamner, Tq. Sangamner,
District Ahmednagar.
4. Bhimraj S/o Gabaji Gagare,
Age 68 years, Occu : Agri.,
5. Babasaheb S/o Gabaji Gagare (Deceased)
Through Legal Heirs,
- 5(a) Kausabai S/o Babasaheb Gagare,
Age 76 years, Occu : Nil,
- 5(b) Ashok S/o Babasaheb Gagare,
Age 46 years, Occu : Agri.,

- 5(c) Balasaheb S/o Babasaheb Gagare,
Age 36 years, Occu : Agri.,
6. Machindra S/o Gabaji Gagare,
Age 65 years, Occu : Agri.,
7. Sindhubai w/o Machindra Gagare,
Age 63 years, Occu : Agri.,

All are residing of Varwandi,
Tal. Sangamner,
District Ahmednagar.

... **Respondents**

WITH

CIVIL APPLICATION NO.5669 OF 2019

IN

WRIT PETITION NO.8332 OF 2018

1. Bhimraj S/o Gabaji Gagare,
Age : 68 years, Occu. Agril.
2. Babasaheb S/o Gabaji Gagare (Deceased)
Through Legal Heirs
- 2(a) Ashok S/o Babasaheb Gagare,
Age 46 years, Occu. Agril.,
- 2(b) Balasaheb S/o Babasaheb Gagare,
Age 36 years, Occu. Agril.,
3. Machindra S/o Gabaji Gagare,
Age 65 years, Occu. Agril.,
4. Sindhubai W/o Machindra Gagare,
Age 63 years, Occu. Agril.,

All are residing of Varvandi,
Tal. Sangamner,
District Ahmednagar.

... **Applicants**

Versus

1. Dinkar S/o Pandharinath Gagare,
Age : 65 years, Occu. Agril.,
R/o. Varvandi, Tal. Sangamner,
District Ahmednagar.
2. Raosaheb S/o Yadav Gagare,
Age : 68 years, Occu. Agril.,
R/o. Varvandi, Tal. Sangamner,
District Ahmednagar.
3. The State of Maharashtra,
Through its District Collector,
Ahmednagar.
4. The Sub Divisional Officer,
Sangamner Division, Sangamner,
District Ahmednagar.
5. The Tahsildar,
Sangamner, Tq. Sangamner,
District Ahmednagar. ... **Respondents**

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Mr. A.T.Kanawade, Advocate for Petitioners.

Mr. K.B.Jadhavar, AGP for Respondent Nos.1 to 3-State.

Mr. A.Z.Gandhi, Advocate for Respondent Nos.4, 5-B, 5-C, 6, 7.

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CORAM : V. K. JADHAV, J.

RESERVED ON : 13.11.2019.

PRONOUNCED ON : 19.11.2019.

JUDGMENT :-

1. Heard finally at admission stage by consent.

2. By this writ petition, the petitioners-original respondents in Rasta Case No.29 of 2012 (old) and Rasta Case No.15 of 2016 (new) seeks to challenge the order dated 13.04.2017 passed by learned Tahsildar and the order dated 31.05.2018 in Revision Application No.154 of 2017 passed by the learned Sub-Divisional Officer, Sangamner Division, District Ahmednagar.

3. Respondent Nos.4 to 7 herein had filed an application under Section 5 of the Mamlatdars' Courts Act, 1906 before Tahsildar, Sangamner stating therein that there is a old 10 feet road in width towards the western side of the land Gut No.48/1 and 48/3 and the present petitioners obstructed the said road. It has been stated in the said application that there is no alternate way for them to access their land.

4. The petitioners-original respondents in the said Rasta Case have strongly resisted the said application by filing their written statement. It has been contended that the boundaries of the property and the so called road are not specifically mentioned in the application and as such the same could not be identified. It has been stated that the original respondent

Nos.1 and 2 had purchased the land Gut No.48/1 and 48/3 from one Daulat Gagare under the registered sale deed for valuable consideration of Rs.51,000/- on 21.05.1997 and the land Gut No.48/6 is their ancestral land. It has not mentioned in the said sale deed about any road ten feet in width towards the western side. Even the land Gut No.48/2 had been purchased by the respondents-original petitioner Sindhubai and even in the said sale deed, the said road towards the western side is not mentioned. It has been specifically stated that there is a stream, east-west in direction and village Khamba is situated towards the east and Varwandi is towards west and the respondents-original petitioners and the petitioners herein original-respondents are using the said road as an access to their respective lands. Furthermore, there is no land of the respondents-original petitioners towards the northern side of Gut No.48/1 and 48/3. Thus, they are prayed for dismissal of the Rasta Application.

5. After spot inspection and drawing the panchnama the learned Tahsildar, Sangamner by impugned order dated 13.04.2017 allowed the Rasta Application. Being aggrieved by the same, the petitioners-original respondents have preferred

the Revision Application before the Sub Divisional Officer, Sangamner and by the impugned order dated 31.05.2018 the Sub Divisional Officer has confirmed the order passed by the Tahsildar. Hence, this Writ Petition.

6. The learned counsel for the petitioners-original respondents submits that as per the panchnama dated 14.11.2014, the path way on the *Bandh* of 48/1, 48/3 and 48/6 has been noted. It has also been noted that there are faint signs of the marks of the bullock carts towards the western side of the land Gut No.48/1 and eastern side of the land Gut No.48/6 till the land Gut No.48/2. However, the levelling of the land Gut No.48/1 was going on at that time and as such the aforesaid observations about faint marks of the bullock carts are not indicative of any permanent cart way. The learned counsel submits that in the respective sale deeds for the aforesaid land purchased by the petitioners so also by the respondents, the said cart way is not shown. The learned counsel submits that towards the southern side of the stream also the lands of the respondents-original petitioners are situated and there is no land towards the northern side of the land Gut No.48/1. The learned counsel submits that in all

probabilities there cannot be any cart way towards the northern side of the land Gut No.48/1. However, both the authorities have not considered the same. The writ petition deserves to be allowed.

7. The learned counsel for the respondents-original petitioners submits that there are concurrent findings by both the authorities. It has been specifically stated in the spot inspection panchnama dated 14.11.2014 drawn by the Tahsildar, Sangamner about the path way so also the cart way. So far as the land Gut No.48/1 and 48/2 are concerned, it has been specifically mentioned in the spot panchnama that towards the western side of these two gut numbers there are marks of the cart way. It is thus apparent that the petitioners herein original-respondents have obstructed the said way and the authorities have rightly directed to remove the said obstructions. There is no substance in this writ petition and the writ petition is liable to be dismissed.

8. I have also heard the learned AGP for the respondent Nos.1 to 3-State.

9. On going through the orders passed by the authorities

below and on careful perusal of the spot inspection panchnama drawn by the Tahsildar, Sangamner dated 14.11.2014 it appears that the path way on the middle portion of the *Bandh* of the land Gut No.48/1, 48/3, 48/6 is observed. However, in addition to that, it has been specifically mentioned in the spot panchnama that towards the western side of the land gut No.48/1 and 48/2 there are faint marks of the bullock carts. It is not disputed that the respondent-original applicant No.1 who is in possession of land Gut No.48/3 and is also the owner of land Gut No.83/2 and he has also constructed a residential house therein. Original applicant No.2 has his residential house in the land Gut No.83/4 and original applicant No.3 has his house in the land Gut No.83/3. The petitioners herein are having their land in Gut No.48/1 and 48/6. The original applicants had purchased the land Gut No.48/2. Initially the land Gut No.48/1, 48/2 and 48/3 are owned by one Sampat Revji Gagare. Thus, in all probabilities the said Sampat Gagare kept the road of ten feet in width towards the western side of the said lands as an access to the main road. As per the map drawn by the Tahsildar, Sangamner the land Gut No.48/1, 48/2 and 48/3 are situated towards the eastern side whereas

the land Gut No.48/6 is situated towards the western side and there is a *Bandh* between these lands. It has been clearly mentioned in the spot panchnama that there is a path way on the said *Bandh* and further towards the western side of the land Gut No.48/1 and 48/2 the marks of the cart way are appearing. Though the petitioners have stated that there is a way through the stream, however, as rightly observed by the Tahsildar such a road through the stream is not permissible. In view of the specific observations in the spot panchnama, which has been drawn in presence of the parties, I do not find any substance in the present writ petition. There are concurrent findings of both the authorities. Furthermore, the said road is on the *Bandh* of the lands towards the eastern side and western side and as such in all probabilities would not cause any damage to the crops. There is no substance in this writ petition. Hence, I proceed to pass the following order :

ORDER

1. The Writ Petition is hereby dismissed.
2. In view of dismissal of the Writ Petition, nothing survives in the Civil Application filed by the

Respondents, accordingly the same also stands disposed off.

(V. K. JADHAV, J.)

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