

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.13952 OF 2019

RAMESH SAHEBRAO DAHIHANDE AND OTHERS
VERSUS
BHANUDAS BABURAO GAIKE AND OTHERS

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Advocate for Petitioners : Shri Natu Sharad V.
Advocate for Respondent 1 : Shri Palodkar Devdatt P.
AGP for Respondents 3 & 4 : Shri Munde S.W.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: November 20, 2019

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PER COURT :-

1. I have heard the learned Advocates for the petitioners, respondent No.1 and the learned AGP for respondents 3 and 4.

2. The petitioners are aggrieved by the order dated 15.3.2019, passed by the Additional Divisional Commissioner, Aurangabad in a Review Application, by which he has completely over turned his earlier order dated 23.6.2018.

3. I have considered the submissions of the litigating sides and have perused the petition paper book with their assistance.

4. The genesis of this litigation is an application dated 31.5.2012, filed by these petitioners informing the Tahsildar that the

respondents have created obstacles in the path of a road, by which, the petitioners could walk upto their agricultural lands in Gut Nos. 54, 55, 57 and 59. The obstacle allegedly created at the junction at Gut No.56 has created an obstacle to these petitioners to travel upto their farm lands. I find that the grievance voiced by the petitioners in the said application was with regard to the obstacle created and the use of the common well in Gut No.57. The said application contains such pleadings which would indicate that the petitioners desired the removal of obstacles. This is permissible under Section 5(2) of the Mamlatdar's Courts Act, 1906.

5. As the petitioners have not specifically mentioned any provision in the application dated 31.5.2012, the Tahsildar proceeded to pass an order under Section 143 of the Maharashtra Land Revenue Code, 1966 (MLR Code), observing that the application of the non-applicants is rejected and the request of the petitioners is accepted and a road is granted on the bandh of Gut No.56.

6. Respondent No.1, therefore, approached the Sub Divisional Officer under Section 247 of the MLR Code. He delivered his order on 11.2.2016, thereby rejecting the proceedings initiated by respondent No.1. He, therefore, approached the Additional District

Collector under Section 247, which was allowed by order dated 27.3.2017. The petitioners, therefore, approached the Additional Commissioner, Land Records, Aurangabad by a revision under Section 257 of the MLR Code. By the first order dated 26.3.2018, he allowed the revision filed by this petitioner and by a subsequent order, dated 15.3.2019, he allowed the Review Application of respondent No.1.

7. I find that confusion has occurred on account of the petitioners having approached the Sub Divisional Officer against the order of the Tahsildar in view of the error committed by the Tahsildar by invoking Section 143 of the said Act, in his order.

8. The learned Advocate for the petitioners submits that though a vague application was filed by the petitioners without taking legal assistance, they intended to have the obstacles removed and it was not their case for creation of a new road. As they succeeded before the Additional Collector, who set aside the order of the Tahsildar under Section 247 of the MLR Code, the confusion percolated right upto the impugned order.

9. Considering the above and keeping in view that the petitioners now make a categorical statement that they had never prayed for

creation of a new road and merely wanted the obstacles to be removed from a purported existing road under Section 5(2), that this petition is disposed off with the following observations:-

(a) All the parties shall appear before the Mamlatdar, Tahsil Office, Aurangabad on 9.12.2019 at 3.00 PM.

(b) The application dated 31.5.2012 shall stand restored and the original applicants are at liberty to prepare a proper application as an amendment addition to the one already filed on 31.5.2012.

(c) The respondents would be granted four weeks' time to submit their detailed Written Say, pursuant to such amendment.

(d) The parties shall then address the Tahsildar under Section 5(2) of the Mamlatdar's Courts Act, 1906 and all contentions of the litigating sides are kept open to be considered for adjudication.

(e) The impugned orders are, therefore, rendered inconsequential and no authority under the Mamlatdar's

Courts Act, 1906 shall be influenced by any observations set out in the said orders which have been passed under the MLR Code.

(f) It is expected that the Tahsildar would conclude the said proceedings on/or before 31.7.2020.

(RAVINDRA V. GHUGE, J.)

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