

IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT AURANGABAD

WRIT PETITION NO. 10614 OF 2018

1. Laxman Ramrao Dhule,  
Age. 65 years, Occ. Agricultural,  
R/o. Savandgao, Tq. Vaijapur,  
Dist. Aurangabad.
2. Madhukar Laxman More,  
Age. 40 years, Occ. Agricultural,  
R/o. As above.

Versus

1. Mansub Rambhaji Dhule,  
Age. 55 years, Occ. Agriculture,  
R/o. Savandgao, Tq. Vaijapur,  
Dist. Aurangabad.
2. The Tahsildar,  
Tahsildar Officer, Tq. Vaijapur,  
Dist. Aurangabad.

Advocate for Petitioners : Mr. V.S. Palsikar.  
Advocate for Respondent No. 1 : Mr. A.R. Kawade.  
AGP for Respondent No. 2 : Mr. S.R. Yadav.

CORAM : RAVINDRA V. GHUGE, J.  
Dated : 14.03.2019

ORAL JUDGEMENT :

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.
2. The petitioners/original defendants are aggrieved by the interlocutory order passed by the trial Court dated 16.04.2018, below

Exhibit 5 in RCS No. 44/2018, filed by respondent No. 1. By the said order, the petitioners are prevented from implementing the order of the Tahsildar dated 29.12.2017. The petitioners are further aggrieved by the judgment and order dated 07.07.2018, by which their Miscellaneous Civil Application No. 16/2018, has been dismissed.

3. On 24.09.2018, this Court had passed the following order :

*“1. I have heard the learned advocates for the petitioners, respondent No. 1 and the learned AGP on behalf of respondent No. 2.*

*2. Issue is as regards the way to be used by the petitioners to enter the farm land Gat Nos. 184 and 185. Respondent No. 1 is opposing the use of the Bandh of his land Gat No. 181, running from west to east. The contention of the petitioners is that there were two panchanamas on record and one inspection map. The Tahsildar herself has carried out the inspection and in none of these revenue records, the existence of an alternate way adjacent to the railway track running from west to east, so as to enable the petitioners to use the Bandh of Gat Nos. 183-188, was found and yet the said Tahsildar has scribbled in paragraph No. 6 of the written statement stating that there is an alternate way but it is inconvenient to the petitioners/defendants.*

3. *Stand over to 08<sup>th</sup> October, as all the respondents have caused an appearance. The learned AGP shall take instructions from respondent No. 2/Tahsildar, as to what is the basis of her statement in paragraph No. 6 of the written statement that there is an alternate road.”*
4. On 20.10.2018, the following order was passed :
  - “1. *This Court had expressed its astonishment in view of the Tahsildar making a statement against the record before the Trial Court which has led to the passing of an adverse order against the petitioners.*
  2. *The learned AGP submits that while he was collecting instructions from the Tahsildar, he has been informed that the earlier Tahsildar has been transferred and a new person has taken charge. He, therefore, seeks time.*
  3. *Considering the above, stand over to 26/11/2018.*
  4. *Until then, the petitioners shall use the path between gut No. 181 and 176 only as a walking track. Neither the bullocks nor the bullock carts, much less a tractor, shall be driven on the said path until further order.”*
5. After hearing the learned advocates and upon perusing the petition paper book with their assistance, it is obvious that the trial

Court has passed its order dated 16.04.2018, presuming that the Tahsildar, who was exercising his jurisdiction under Section 5 (2) of the Mamlatdars' Courts Act, 1906, had passed the order dated 29.12.2017, exercising his powers under Section 143 of the MLR Code. This is apparent in view of the fact that the applications filed by the petitioners/original defendants were for seeking orders regarding clearing all obstacles in the path which was routinely used by the litigating sides for reaching the main road on the west side and then travel to the north for reaching the Gavthan. In my view, the Tahsildar has committed a mistake which is apparent from the operative part of the order passed by the Tahsildar at clause '1' wherein he concludes that the application is allowed under Section 143 of the MLR Code. The Trial Court, as well as, the District Court have fallen in an error. The language used by the Tahsildar in the operative part of the order has created the misunderstanding and therefore, the trial Court concluded that a new way could not have been created by the Tahsildar under Section 143 when he was dealing with an application under Section 5 (2) of the 1906 Act.

6. In the light of the above, I deem it appropriate to clear the issue as regards the order of the Tahsildar dated 29.12.2017, to prevent further errors on the part of the litigating sides as well as, possibly, on the part of the trial Court. It be, therefore, noted that

the order dated 29.12.2017, passed by the Tahsildar shall be deemed to be an order under Section 5 (2) as he has only permitted the petitioners to use the road on the Bandh of Gat No. 176 and 181.

7. The learned AGP has ably assisted the Court by perusing the record and sketch map carefully. He submits that on the south side, the issue is as regards the Bandh of 181 belonging to respondent No. 1 who is the original plaintiff. On the north, the Bandh of 179 up to more than half length approximately and 180, is involved in this issue of the Rasta case. As per the admission of the plaintiff, the Cart way joining the main road on the west side, from the Bandh of 181, is a distance of about 600 to 700 feet which is used by the plaintiff as a Cart/Tractor way. Consequentially, the Bandh of 181 shared with 179 up to the end touching the petitioners land at Gat No. 184, seems to be a narrow path and could be a path way. The panchnama and the spot inspection also indicates this position.

8. In view of the above, the impugned order passed by the trial Court dated 16.04.2018, now stands modified only as a temporary measure and on the following conditions :

*(a) The Tahsildar shall ensure that the petitioner would be permitted to use the Bandh from 184 up to the border of 176 with 179 on the north side and 181 on the south side.*

*(b) Only during the agricultural season, the said path could be used as a Bullock Cart way for transportation of agricultural equipment, harvest, fertilizers, etc.*

*(c) For the rest of the time, the said path could be utilized for the purpose of walking up to the road or the two wheelers to reach up to the main road.*

9. With this modification, this petition is partly allowed. Rule is made partly absolute in the above terms.

10. The parties are at liberty to request the trial Court to decide RCS No. 44/2018 as expeditiously as possible. So also, by the above stated interim arrangement during the pendency of the suit, no equities would be created in favour of the defendant and the trial Court would decide the suit on its own merits.

( RAVINDRA V. GHUGE, J. )