

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.3872/2018

Sachin s/o Madhukar Raut and others.

Vs.

Deputy Collector (Revenue) Washim, and others.

Office notes Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri A.M.Tirukh, Advocate for petitioners.

Mrs. A.R.Kulkarni, Assistant Government Pleader for respondent nos. 1 & 2.

Shri S.D.Chande, Advocate for respondent nos. 3 to 15.

CORAM : A.S.CHANDURKAR, J.

DATED : July 10, 2019

The petitioners are aggrieved by the order passed by the Additional Collector in proceedings under Section 23 of the Mamlatdar Courts Act, 1906 (for short, 'the said Act') maintaining the order passed by the Tahsildar in proceedings under Section 5 of the said Act.

The respondent nos. 3 to 15 filed an application before the Naib Tahsildar making a grievance that the present petitioners had obstructed the right of way as a result of which they could not approach their respective fields. The said application was filed on 28.07.2017. The petitioners filed their reply denying the averments as made. Thereafter on 07.09.2017 and on 14.03.2018 there was a spot inspection carried out by the Revenue Authorities. The applicants-respondent nos. 3 to 15 examined one witness while the petitioner no.1 examined himself. After considering that evidence, the Naib Tahsildar by relying upon the spot inspection dated 14.03.2018 arrived at a conclusion that the petitioners had obstructed the way of the respondent nos. 3 to 15. He therefore directed removal of the obstruction. The Additional Collector has confirmed that order.

Shri A.M.Tirukh learned counsel for the petitioners submitted that in the light of evidence on record brought by the respondent nos. 3 to 15 it could not be said that the said applicants had been using the alleged way and that they were obstructed by the petitioners. He submitted that the inspection dated 14.03.2018 had been carried out without due notice to the parties and observations in that inspection note were not liable to be accepted. An opportunity to cross-examine the Inspector who had carried out inspection ought to have been granted to enable the true facts to come on record. It was thus submitted that the orders passed by the both the Authorities were liable to be set aside.

Shri S.D.Chande, learned counsel for the respondent nos. 3 to 15 supported the impugned orders. He referred to the roznama of the proceedings to indicate that spot inspection was carried out on three occasions. Inspection dated 14.03.2018 was carried out after due intimation to the parties through their counsel. Similarly though the application filed by the petitioners for cross-examining the Talathi had been allowed and the said witness was present on two occasions, he was not so examined. Learned counsel therefore submitted that the impugned orders had been passed after giving sufficient opportunity to the parties and after considering the entire material on record.

Heard learned counsel for the parties and perused the records of the case as well as the material on record. It can be seen that after the proceedings were registered, spot inspection was carried out by the Naib Tahsildar on 11.09.2017 after which interim directions came to be issued on 25.10.2017. Thereafter the evidence of the parties was recorded. Before taking the spot inspection, the parties were put to notice by indicating the fact in the roznama. The roznama has been signed by the concerned parties. Thereafter on 01.03.2018 the Naib Tahsildar directed the Talathi to again inspect the site and submit his

report. Accordingly the Talathi conducted his inspection on 14.03.2018. After the spot inspection dated 14.03.2018 was conducted, the petitioners moved an application on 21.03.2018 seeking permission to cross-examine the Talathi. Though the Talathi was present on two occasions with the record, he was not cross-examined on the said spot inspection report. After considering the entire evidence on record, the Authorities have recorded a finding that the petitioners had obstructed the right of way of the respondent nos. 3 to 15. Since there was substantial material on record including the admission of the petitioner no.1 in his cross-examination that he had put up an iron gate by way of obstruction, both the Authorities were justified in directing its removal.

In writ jurisdiction it would not be permissible to re-appreciate the entire evidence to record a different finding. Sufficient opportunity was also granted to the petitioners to justify their stand. Thus, in absence of any jurisdictional error, there is no case made out to interfere in writ jurisdiction. The writ petition is dismissed. No costs.

JUDGE

Andurkar.