

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 4800 OF 2016

Satyanarayan s/o Raghunath Kabra and others

vs.

Vitthal s/o Laxman Wankhede and others

Office Notes, Office Memorandum of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri. S. A. Mohta, counsel for petitioners.
Smt. Mrunal Naik, AGP for respondents No.2 to 5

CORAM : MANISH PITALE J

DATED : 11.11.2019

By this writ petition the petitioners have challenged order dated 26.05.2016 passed by the Additional Commissioner Amravati Division i.e. respondent No.2 whereby revision application filed by the respondent No.1 under the provisions of the Maharashtra Land Revenue Code, 1966, was allowed. The orders passed by the Sub Divisional officer and Collector were set aside and the matter was remanded back to the Nayab Tahasildar for fresh enquiry.

2. The facts leading to the present petition are that the petitioners who are owners of Survey No.31, village Pardhi, Tal. & Dist. Washim filed an application before the Collector Washim complaining that the owner of adjoining field survey No.30 i.e. respondent No.1 had

illegally blocked way through his field, which was existing for a long period of time and a tar road had been illegally constructed by him on the boundary of the two fields towards the north upto the Washim to Ansing road. It was submitted that by doing so, not only had the respondent No.1 blocked an existing way thereby causing inconvenience to the villagers but, the tar road illegally constructed had adversely affected the agricultural field of the petitioner. The Collector referred the matter to the Tahasildar, Washim, for appropriate decision in the matter.

3. A spot inspection was carried out by the Circle Officer and report was submitted before the Tahasildar wherein it was recorded that the existing way cutting through the field of the petitioners at survey No.31 and the field of respondent No.1 at survey No.30 was existing for a long period of time and that the respondent No.1 had closed the said way. It was also recorded that a new way had been constructed by the respondent No.1 as alleged by the petitioners.

4. The Grampanchayat passed a resolution dated 21.04.2008 stating that the old existing road cutting through field survey No.30 and 31 was required to be restored. On the same day a representation was made by number of villagers to the Tahasildar on the same lines.

5. On 07.12.2009, the Tahasildar passed an

order rejecting the application of the petitioners despite taking note of the spot inspection report. It was recorded by the Tahasildar that since the old existing road used to get waterlogged, it was inconvenient for use and that therefore, the tar road could be conveniently used by everybody.

6. On appeal filed by the petitioners, the Sub Divisional Officer set aside the order of the Tahasildar and directed that the old existing Government road should be restored by respondent No.1. Aggrieved by the same, the respondent No.1 filed an appeal before the Collector, which was dismissed as the findings of the Sub-Divisional Officer were found to be correct. A report dated 04.06.2012 submitted by the Circle Officer before the Tahasildar recorded that the order passed by the Sub-Divisional Officer, as confirmed by the Collector, was executed and that the old Government Road was again restored for use by the villagers.

7. Thereafter, on a revision application filed by the respondent No.1 before the additional Commissioner, by impugned order dated 26.05.2016, the same stood partly allowed. The additional Commissioner recorded the contentions raised on behalf of the rival parties and found that there were two sets of villagers, one supporting the old government road and the other supporting the new tar road made by the respondent No.1. There was a reference made to certain inconvenience that was allegedly suffered by students

using the said road and on that basis, the additional Commissioner partly allowed the revision application by setting aside the orders of the Collector and Sub Divisional Officer and further remanding the matter back to the Nayab Tahasildar for fresh enquiry and orders.

8. The present writ petition has been filed by the petitioners being aggrieved by said order passed by the additional Commissioner. The learned counsel appearing for the petitioners submitted that there was no reason for the additional Commissioner to have remanded the matter back to the Tahasildar when entire material, including the said inspection report and resolution of Grampanchayat were on record. It was further submitted that there was no material on record for the additional Commissioner to have concluded that there were two sets of villagers who were in support of the two ways available, one being the old government road and other being the new tar road constructed by respondent No.1.

9. While issuing notice on 24.08.2016, this Court had granted interim stay to the impugned order passed by the additional Commissioner. This would demonstrate that the order passed by the Collector stood executed, resulting in the villagers using the old government road even as on today. The respondent No.1 was served, as recorded in the office note dated 28.11.2016, but the said respondent chose not to appear despite service.

10. The learned AGP appeared for respondents No.2 to 5. It is submitted by the learned AGP that since the impugned order passed by the additional Commissioner directs fresh enquiry, it would be in the interest of all parties that a fresh enquiry is conducted into the dispute between the parties.

11. Having heard the learned counsel for the rival parties and upon perusal of the material placed on record, it needs to be examined whether the additional Commissioner was justified in partly allowing the revision application and remanding the matter back to the Tahasildar for fresh enquiry.

12. The material on record shows that when the matter was referred to the Tahasildar, a spot inspection was conducted by the Circle Officer and a report dated 15.02.2008 was placed before the Tahasildar. The said report categorically records that the old government way did exist through the field at survey No.30 belonging to the respondent No.1 and that it was obstructed by him. The report also records that new tar road was constructed towards the north by the respondent No.1.

13. The Grampanchayat passed a resolution dated 31.04.2008 categorically stating that the old government road was convenient and it was required to be restored. On the same day, representation was made by the large number of villagers before the Tahasildar also insisting on restoration of the old government road

available for use. Despite the said material on record, the Tahasildar rejected the application filed by the petitioners on the ground that the old government road had problems of waterlogging and therefore, new tar road constructed by respondent No.1, was more convenient. As opposed to this, the Sub Divisional Officer and the Collector concurrently concluded that the old government way was indeed existing and that the respondent No.1 had illegally obstructed the same and further that the government way was required to be restored in view of the material on record.

14. In the impugned order passed by the additional Commissioner, after recording the contentions raised on behalf of the rival parties, the basis for remanding the matter to the Nayab Tahasildar is found in the the last paragraph of the impugned order. The reasons for remanding the matter, according to the additional Commissioner were, firstly, that there was a set of villagers who were in favour of the new tar road constructed by the respondent No.1, secondly that those who were in favour of the new tar road had claimed that the old government road had problem of waterlogging and thirdly, that students who were earlier required to cross the old high way and then they could pass through survey No.30, were now required travel all around the highway which was a matter of risk. On this basis, the additional Commissioner found that although the Circle Officer conducted spot inspection but, no clear opinion

was expressed regarding the said difficulties of the villagers.

15. In the first place, there was absence of material to show that there was indeed a set of villagers who had either represented before the Tahasildar or before any other authorities below regarding alleged inconvenience due to waterlogging in using the old government road and the alleged difficulties faced by the students. Even otherwise, existence of the old government road for years together was neither disputed by respondent No.1, nor was it found to be incorrect by the additional Commissioner. The spot inspection report prepared by the Circle Officer, as also the resolution by the Grampanchayat and representation of the same date submitted by villagers before the Tahasildar, clearly demonstrated that the old government road indeed existed for a long period of time and that respondent No.1 had obstructed the same. There is nothing on record to show that respondent No.1 had sought permission from any of the authorities to construct the tar road after having blocked the old government road. These aspects were taken into consideration by the Sub-Divisional Officer and the Collector while holding in favour of the petitioner and directing restoration of the old government road. The conduct of the respondent No.1, as is evident from the material on record, shows that scant regard was shown to the Rule of law and the respondent No.1 on his own whim, obstructed the old

government road and constructed a tar road, which according to him was convenient for all the persons using the old government road. These aspects were properly taken into consideration by the Sub Divisional Officer while setting aside the order of the Tahasildar and the Collector while confirming the order of the Sub Divisional Officer.

16. But, the additional Commissioner seems to have taken into consideration material that was extraneous to the dispute between the parties. There was nothing on record to show which set of villagers had approached the authorities to claim that the old government road was inconvenient due to waterlogging and the new tar road was, therefore, required to be permitted. In any case, existence of the old government road was not disputed. The material available on record clearly demonstrates that the additional Commissioner misdirected himself in interfering with the concurrent orders passed by the Sub Divisional Officer and the Collector. There was no reason for the additional Commissioner to set aside the said orders and to have remanded the matter to the Tahasildar for fresh consideration. This Court is satisfied with the material available on record, which fully justifies the approach adopted by the Sub Divisional Officer and the Collector.

17. In view of above, the writ petition is allowed. Impugned order passed by the additional Commissioner is quashed and set aside and the orders

passed by the Sub Divisional Officer and Collector are restored.

JUDGE

KOLHE