

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

70 WRIT PETITION NO.5129 OF 2018

Tukaram Madhavrao Gavhane

Age : 46 years, occ : agri.,

R/o Bodwad, Taluka Sillod,

District Aurangabad.

Petitioner.

Versus

Dnyaneshwar Ramrao Gavhane

Age : 34 years, occ : agri.,

R/o Bodwad, Taluka Sillod,

District Aurangabad.

Respondent

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Mr. B.S. Chondhekar, Advocate for the petitioner.

Mr. D.P. Palodkar, Advocate for the respondent.

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CORAM : **Rohit B. Deo, J.**

DATE : 13th January 2020.

JUDGMENT :-

. Rule. Rule is made returnable forthwith. Heard finally with consent of the parties.

2. The petitioner is assailing the order dated 24.11.2015 rendered by the Additional Collector, Aurangabad in exercise of revisional jurisdiction under Section 23 (2) of the Mamlatdar Courts Act, 1906 (the "Act" for short), whereby and whereunder the revision preferred by the respondent is

allowed and the order dated 04.04.2015 rendered by Tahsildar, Sillod, District Aurangabad is set aside.

3. I have heard learned Counsel at length and with their able assistance the reasons recorded in the order impugned are critically examined.

4. Perusal of the statement of father of the respondent namely Shri Ramrao Gavhane would show that the encroachment on the Shiv road is admitted. The father of the respondent states that he is ready to remove the encroachment in accordance with law. In the alternate, father of the respondent states that the road can be provided from the eastern side of the agricultural field falling to the share of respondent – Dnyaneshwar.

5. The effect of the revisional order which is impugned, is that the direction issued by the Tahsildar to clear the Shiv road is set aside.

6. Several reasons are recorded by the Additional Collector in support of the revisional order. One of the reasons is that in view of the admitted position that the Shiv road was blocked since last more than 10 years, the grievance would not be maintainable under the Act in view of the provisions of Section 5 (3) of the Act, which requires that the

suit under the said Act shall be brought within six months of the accrual of cause of action. This finding appears to be consistent with the provisions of the Act.

7. However, it is not disputed that the Shiv road is occupied. In all fairness the learned Counsel appearing for the parties have brought to my notice the extant policy of the State Government which mandates the Collector to initiate steps to clear the Shiv road.

8. In the given set of facts, while I do not propose to interfere with the order impugned in writ jurisdiction, considering the irrefutable position that the Shiv road is blocked, I would permit the petitioner to move an appropriate application before the Tahsildar who shall take necessary steps to clear the Shiv, if the Shiv is found blocked, in accordance with the extant policy and the provisions of law.

9. The petitioner is permitted to prefer such application within two weeks and the Tahsildar shall, after personally inspecting the spot or having the spot inspected by a responsible sub-ordinate and after hearing the parties, shall pass necessary orders as regards Shiv road in question, within next 30 days.

10. It is further made clear that the Tahsildar shall give due consideration to the alternate proposal of the respondent that the way shall be provided to the villagers from the eastern side of Gut No.15.

11. Rule is made absolute in aforesaid terms.

(ROHIT B. DEO, J.)

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