

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.8463 OF 2016

Sopan s/o Rambhau Navghare,
Age : 66 years, Occupation : Agriculture,
R/o Lolegaon, Taluka Shevgaon,
District Ahmednagar.

...PETITIONER

-VERSUS-

- 1 The State of Maharashtra.
Through it's Secretary,
Department of Revenue and Forest,
Mantralaya, Mumbai-32.
- 2 The Sub Divisional Officer,
Pathardi Sub Division,
Pathardi, District Ahmednagar.
- 3 The Tahsildar,
Tahsil Office, Shevgaon,
District Ahmednagar.
- 4 Vishwanath s/o Kondiba Navghare
- 5 Laxman s/o Keru Kate
- 6 Tulsiram s/o Keru Kate
- 7 Baban s/o Rajaram Kate
- 8 Ambadas Markas Kate
- 9 Balasaheb Markas Kate
- 10 Raosaheb s/o Laxman Gosavi
- 11 Rangnath s/o Tukaram Kate

Respondent Nos.4 to 11 all
occupation : agriculture
R/o Lolegaon, Taluka Shevgaon,
District Ahmednagar.

...RESPONDENTS

...
Advocate for Petitioner : Shri Kakde Yuvraj V.
AGP for Respondents 1 to 3 : Shri N.T.Bhagat
Advocate for Respondents 4 to 11 : Shri C.K.Shinde

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 20th February, 2020

Oral Judgment :

1 Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2 By this Writ Petition, the petitioner seeks to challenge the concurrent findings, (i) of the Tahasildar dated 24.06.2015 under Section 5(2) of the Mamlatdars' Courts Act, 1906 by which, Rasta Case No.44/2014 filed by respondent Nos.4 to 11 was allowed and (ii) of the Revisional Authority dated 01.04.2016 under Section 23(2) of the Mamlatdars' Courts Act, 1906 by which, RTS Revision No.90/2015 has been dismissed.

3 By an order passed by this Court (Coram : T.V.Nalawade, J.) dated 19.08.2016, status-quo was granted and the common *bandh* (boundary) at issue was permitted to be used as a footpath. On

02.01.2020, this Court (Coram : Rohit B. Deo, J.) passed an order directing the Tahasildar to visit the spot, draw a fresh *panchanama* and bring on record the width of the footpath. This was directed to be done within ten days and the parties were entitled to remain present when the *panchanama* is recorded.

4 Pursuant to the above directions, the Tahasildar has complied with the order and has placed the statements of the parties and the spot inspection report along with the sketch map, on record. The fresh report submitted by the Tahasildar dated 29.01.2020 (09 pages) inclusive of the statements, *panchanama*/ spot inspection and sketch map, are taken on record and collectively marked as “X” for identification.

5 It was recorded as per the sketch map and the *panchanama* that the rectangular portion of the land appearing vertical in the sketch map from the south to north direction, belongs to the petitioner. On the south side and adjacent to the southern border of the petitioner’s land, is the Bhatkudgaon-Lolegaon road, which is used by the villagers to reach upto the said land Gat Nos.51 and 52. The land of respondent No.4 (Vishwanath Navghare) is situated on the extreme north side, which has his residential accommodation within his land. On the northern side of his land, there is an *odha* (water stream) which is a path by which water flows and nobody uses the said path. Consequentially, respondent No.4

(Vishwanath), who is on the northern side of the land of the petitioner and rest of respondent Nos.5 to 11, who are abutting the border of the petitioner's land on the eastern side, have no other path, but to use the Bhatkudgaon-Lolegaon road on the southern side and travel in the south to north direction to reach their lands on the eastern side. As the path goes upward towards the north, respondent No.4 uses the said path to reach his land on the north-west side.

6 The recent *panchanama*, spot inspection report and sketch map indicates that it is only after the road touches the land of the petitioner at the junction of the petitioner's land and Shri Pote's land, that the cart-way hits an artificially created road bottle neck and narrows down into a footpath. This is because, according to the concurrent findings, the petitioner has blocked the cart way and in order to destroy the signs of the cart way, has ploughed the field to be used for agricultural activities and has narrowed it down to a footpath (*paul vat*).

7 The grievance of the petitioner is that the Tahasildar, by allowing the application of the respondents has concluded that as the road upto the junction of the petitioner and respondent No.4's lands is 15 feet wide road and that is only path that travels from the north to south direction to reach the main Bhatkudgaon-Lolegaon road, it should be permitted to be used as a cart way and has, therefore, opened a 15 feet wide road. On this count, the learned advocate for the respondents frankly

stated that the width of 8 feet is enough for the cart to be driven and they are agreeable to reduce the width to 8 feet though earlier it was 15 feet. The learned advocate for the petitioner submits, on instructions from the petitioner present in the Court, that he is not agreeable for even an 8 feet wide road.

8 Considering the above and keeping in view the concurrent findings as well as the recent spot inspection report and sketch map, the fact that the petitioner has now even destroyed the footpath (*paul vat*), the mala fide intentions of the petitioner are writ large. I am of the view that this Writ Petition, being devoid of merit, deserves to be dismissed.

9 At this juncture, I once again requested the learned advocate for the petitioner to consult the petitioner and ask him whether, this Court can modify the order of the Tahasildar and reduce the 15 feet path into an 8 feet wide cart way. The learned advocate for the petitioner, on instructions from the petitioner present in the Court, submits that he would not mind if this petition is dismissed, but he would not give anything more than the footpath (*paul vat*).

10 At this juncture, the learned advocate for the respondents makes a fair statement, on instructions, that they are satisfied even by the eight feet wide road notwithstanding the *malafide* actions of the petitioner and though the road was earlier 15 feet wide, they are willing to sacrifice 7 feet and have the road reduced to only 8 feet to the extent of the border

of the petitioner's land running south to north on the eastern side.

11 With such statement having been made, respondent No.3 is directed to monitor the clearing of the said path only to the extent of 8 feet width from Bhatkudgaon-Lolegaon road in south to north direction on the eastern side of the petitioner's land upto the junction of respondent No.4's land notwithstanding that further path is 15 feet wide.

12 With these directions, this Writ Petition is dismissed. Rule is discharged.

13 The sketch map on which this Court has made certain markings in consultation with the learned advocates for the respective sides, shall be a part of this order.

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(RAVINDRA V. GHUGE, J.)