

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10218 OF 2019

Ravindra @ Gorakh Bhimsen Shelar

...Petitioner

versus

The Tahsildar, Erandol and others

...Respondents

.....
Mr. U. S. Malte, advocate for the petitioner
Mr. A. B. Chate, A.G.P. for respondent No.1
Mr. V. B. Patil, advocate for respondent Nos. 2 to 7
.....

CORAM : V. K. JADHAV, J.
DATED : 3rd FEBRUARY, 2020

ORDER :-

1. By consent of the parties, heard finally at admission stage.
2. The respondent Nos. 2 to 7 herein have filed an application under Section 5(2) of the Mamlatdar's Court Act, 1906, stating therein that the Bullock Cart track leading to their land, passes along the land of the petitioner, has been obstructed by the petitioner. It is thus prayed that the Tahsildar should exercise his powers to remove the obstructions and clear the said track for approaching to their lands. The petitioner caused his appearance in response to the notice and contended before the Tahsildar that there was absolutely no such track in existence at any time, as alleged by the respondents. It has also been contended that the respondents have another track available which was being used by them for approaching to their fields. The Tahsildar had carried out the

spot inspection and after hearing the parties, by impugned order dated 15.1.2019 allowed the application and directed the petitioner to remove the obstruction on that track. Being aggrieved and dissatisfied with the order passed by the Tahsildar, the present petitioner preferred revision application No. 6 of 2019 as per the provisions of Section 23 (2) of the Mamlatdar's Courts Act, 1906 before the Sub Divisional Officer and the Sub Divisional Officer by his order dated 12.6.2019, which was corrected on 17.6.2019 to the extent of typographical mistake, dismissed the revision. Hence, this writ petition.

3. Learned counsel for the petitioner submits that the Tahsildar in view of the provisions of Section 5 of the Mamlatdar's Courts Act, has no jurisdiction to grant any new cart way to approach the land. Section 5(2) of the Mamlatdar's Court Act provides that an obstruction as referred to in the earlier part of section can be removed in order to make available the use of a road or customary way thereto. It contemplates that there should be a road in use and the obstruction which can be removed. Learned counsel submits that in the sale deed pertaining to the land of the petitioner the boundaries of the petitioner's land do not show the cart track on any side of his land. Learned counsel submits that the spot inspection report indicates that there is another approach road available to the respondents herein for approaching to their fields. Learned counsel submits that the cart track merged into the Shiv Rasta. The respondents herein are exploring the possibility as to whether the Shiv Rasta would be converted into Wahiwat Rasta. Learned counsel

by referring to the village map submits that alternate road is available and the road as shown to have been cleared is not in existence. It has been specifically stated in the panchnama dated 27.9.2018 that the road which is merged into Shiva Rasta is available up to Gat No.61 and thereafter there is path way at the bandh of Gat Nos. 61/1 and 61/2/b-1. It has been specifically mentioned in the panchnama that no track road is available to access the land Gat Nos. 103, 104/1, 104/2, 105/1, 105/2 and 106. However, both the authorities below have not considered the same and allowed the application.

4. Learned counsel for respondents Nos. 2 to 7 submits that the respondent No.2 is the owner of land Gat No. 103, the respondent No.3 is owner of land Gat No. 104/1, respondent No.4 is owner of land Gat No. 104/1, respondent No.5 is owner of land Gat No.105, respondent No.6 is owner of land Gat No.105 and respondent No.7 is owner of land Gat No. 106 and the petitioner is owner of land Gat No. 61/02/b-2. Learned counsel submits that so far as spot panchnama dated 27.9.2018 is concerned, the Gat numbers were not properly mentioned and therefore, respondents herein have filed an application on 08.10.2018. On the said application, the learned Tahsildar passed an order on 11.10.2018 directing the Circle Inspector and Talathi to visit the spot and draw fresh panchnama. Thus, the Circle Inspector and Talathi visited the spot and they have drawn the spot panchnama on 20.10.2018. It has been specifically mentioned in both the panchnama that no alternate road is available and only cart track road which is

obstructed by the petitioner herein is available. It is part of record that all adjacent owners have filed their affidavits and supported the case of the respondents. There are in all 15 such adjacent owners filed their affidavits in support of the respondents. Learned counsel submits that the order of the Tahsildar is already implemented and present respondents are using the way. There is no substance in this writ petition and the writ petition thus liable to be dismissed.

5. I have also heard the learned A.G.P. for respondent No.1.

6. I have heard learned counsel for the respective parties. With their able assistance I have perused the memo of petition, annexures thereto, affidavit in reply filed by the respondents and the impugned order.

7. On careful perusal of contents of both the panchnama dated 27.9.2018 and 20.10.2018, it transpires that there is no alternate road available to access the lands of the respondents. It is not the case that Shiv Rasta is converted into Wahiwat Rasta. It appears from the contents of panchnama that only the possibility has been explored as to whether the access road is possible from Shiv Rasta. It has been specifically mentioned in the both the panchnama that towards western side of land Gat Nos. 108, 109 and 110 there is old Wahiwat Rasta, east-west in directions and as such, no other way is available to access the land of the respondents herein. It has been discussed in the order

passed by the Tahsildar that Ringangaon to Kharchi (Bk) tar road is available south-north in direction. So far as the land Gat Nos. 106, 104/1 and 103 are concerned, towards the western side of the said lands, land Gat Nos. 108, 109 and 110 are situated. It is further observed in the order passed by the Tahsildar that towards western side of the above stated lands, Shiv of village Kharchi Rangangaon is situated. Thus, the learned Tahsildar on the basis of his spot inspection has observed that so far as the land Gat Nos. 103, 104/1, 104/2, 105 and 106 belonging to the respondents are concerned, there is no alternate road available. It further appears that up to the land of the petitioner, Shiv Rasta has been prepared at the Government expenses. Thereafter, there is Wahiwat Rasta towards western side. However, the said Wahiwat road has been obstructed by digging pits. Learned Tahsildar has also referred to the affidavits filed by the adjacent land owners in favour of the respondents. It is not the case that the learned Tahsildar has given new road to the respondents. However, the learned Tahsildar has observed about the existence of Wahiwat Rasta and also further noted obstruction in the form of digging of pits on the said Wahiwat Rasta. In view of the same, I find not fault in the order passed by the learned Tahsildar which is confirmed by the Sub Divisional Officer with detail discussion. There is no substance in this writ petition. Hence, the writ petition is hereby dismissed.

(V. K. JADHAV, J.)