

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 9943 OF 2018

Shri.Gafoor Lala Jahagirdar	..Petitioner
V/s.	
Shri.Sharif Iqubal Jahagirdar & Ors.	..Respondents

Mr.Ashok B. Tajane for the Petitioner.

Mr.D.R. Desai for Respondent Nos.1 to 6.

Ms.M.S. Bane, AGP for the Respondent Nos.7 to 9-State.

CORAM : C.V. BHADANG, J.

DATE : 06th JANUARY 2020

P.C.

1. The challenge in this petition is to the judgment and order dated 13th July 2018 passed by the Revisional Authority under Section 23(2) of the Mamlatdar's Courts Act ('Act' for short). By the impugned order the Revisional Authority has set aside the order dated 21st April 2018 passed by the learned Mamlatdar, Mhada, District-Solapur. The learned Mamlatdar by his order had allowed the application filed by the petitioners, restraining the respondents from interfering with the user of the road, as claimed by the petitioners.

2. Mr.Tajane, the learned counsel for the petitioner has raised the following contentions:-

(i) That no effective opportunity of hearing was granted to the petitioner by the Revisional Authority. In this regard reference is made to the roznamma dated 25th June 2018 and 05th July 2018. It is submitted that on 05th July 2018 no opportunity of hearing was granted to the petitioners (who were the respondents before the Revionsal Authority).

(ii) It is submitted that an application of transfer of the revision application, from the file of the SDO, Kurduwadi was made as the petitioners were apprehending that they will not get a fair trail before the Revisional Authority. It is pointed out that the Additional Collector, Solapur by an order dated 12th July 2018 had directed the transfer of the revision application, from the file of the SDO, Kurduwadi, to the file of the SDO, Solapur-I. It is submitted that the impugned order is passed on the very next day i.e on 13th May 2018.

(iii) That the Revisional Authority was not justified in observing that there was no obstruction to the road which is not correct in the face of the panchnamma dated 01st November 2017.

Except these there are no contentions raised.

3. The learned counsel Mr.Desai for the respondent Nos.1 to 6 have supported the impugned order. It is submitted that the petitioners had filed written notes of arguments along with their written statement and they have also been recorded to be heard by the Revisional Authority in its impugned judgment and thus there is no breach of principles of natural justice. Secondly it is contended that the order of transfer dated 12th July 2018 was served on the office of the Revisional Authority on 16th July 2018 and thus on the date on which the impugned order is passed, the order of transfer was never communicated to the Revisional Authority. Thirdly, the learned counsel has referred to the cross-examination of Mr.Razak Jahagirdar who is son and the power of attorney holder of the petitioner, in order to submit, that he had admitted that suit road was not in existence which aspect has been considered by the Revisional Authority.

4. I have carefully considered the rival circumstances and the submissions made and I do not find that any case for interference is made out. A conjoint reading of the roznamma along with paragraph No.2 of the impugned order makes it amply clear that the parties were heard by the Revisional Authority. That apart the record also discloses that the petitioner had filed her notes of arguments which have been considered by the Revisional Authority. Even so far as the order of transfer is concerned the record discloses that on the date on which the impugned order is passed i.e. on 13th April 2018, the order of transfer was not communicated to the Office of the Sub Divisional Officer, Kurduwadi.

5. Lastly, the *prima facie* the evidence of Mr.Jagirdhar and particularly paragraph Nos.22 to 27 thereof, shows that Mr.Razak has admitted that the road is not shown in Revenue record and in paragraph No.26 he has stated that no such road is in existence.

6. In that view of the matter no case for interference is made out. The petition is dismissed with no order as to costs.

7. It is however made clear that the observations herein shall not operate against the petitioner, if the petitioner takes

recourse to any other remedy available in law including a remedy before the Competent Civil Court.

8. The ad-interim relief already operating in the petition shall continue to operate for a period of four weeks.

C.V. BHADANG, J.