

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

WRIT PETITION NO.11895 OF 2018

Ramesh Sitaram Donde & Ors. ..Petitioners
V/s.
Shri.Bapu Vitthal Gaikar & Ors. ..Respondents

Mr.A.V. Joshii for the Petitioners.

Mr.PB. Shah for Respondent No.1.

Ms.M.S. Bane, AGP for Respondent Nos.8 and 9-State.

CORAM : C.V. BHADANG, J.

DATE : 23rd JANUARY 2020

P.C.

1. The challenge in this petition is to the order dated 11th June 2018 passed by the Learned Deputy Collector, Nashik in RTS Appeal No.114 of 2017. By the impugned order, the learned Deputy Collector, has set aside the order dated 25th August 2014 passed by the Mamalatdar, Nashik in Vahiwat Case No.8 of 2011. The matter has been remitted back to the learned Mamaltdar. That is a case filed by the respondent, under section 5 of the Mamlatdar Courts Act ('Act' for short) alleging that the customary way/access to his field Survey No.3/2 of Village-Gangavhare has been obstructed by the petitioners (respondents before the learned Mamlatdar). By the

impugned order it appears that there were two spot inspections conducted i.e. in December 2011 and December 2013. There is some dispute as to whether the respondent was noticed or not when the Mamlatdar conducted the inspection in the year 2013. However, for the present it is not necessary to go into the said aspect.

2. The learned counsel for the petitioner has taken through the order passed by the learned Mamlatdar. It is submitted that the learned Mamlatdar considering all the relevant circumstances and the material on record, has found that the respondent, has failed to established the existence of the customary way passing through the field of the petitioner. The learned counsel strenuously urged that the learned Deputy Collector was in error in interfering with the well reasoned order of the Mamlatdar, directing remand of the matter to the Mamlatdar with a further direction to hold spot inspection in the presence of both the parties.

3. The learned counsel further submitted that in the spot inspection conducted in December 2013, the Mamlatdar has found that there was tomato crop standing in the field of the petitioner and therefore it was rightly found that there cannot be a customary way passing through the field of the petitioner.

4. Mr.Shah, the learned counsel for respondent No.1 has submitted that the spot inspection reports i.e. of the year 2011 and 2013, have been found to be discrepant. He points out that after the remand the Mamlatdar has conducted another inspection on 12th October 2018 and therefore no case for interference is made out.

5. I have considered the rival circumstances and the submissions made. Normally this Court would be slow in interfering with an order of remand inasmuch as the same does not result into any manifest injustice, in as much as after the remand both the parties get an opportunity to put forth their case and raise all such contentions as may be available in law and on facts before the Mamlatdar. It is true that the Mamlatdar after considering the two spot inspection reports had refused to allow the application filed by the respondent. However, the learned Deputy Collector has found that the reports of the spot inspection conducted in December 2011 and December 2013 are discrepant.

6. With the assistance of the learned counsel for the parties I have gone through both these spot inspection reports and *prima facie* no exception can be taken to the finding of the Deputy Collector that they are discrepant. It is in these circumstances, that

learned Deputy Collector has allowed the appeal and remitted the application filed by the respondent to the Mamlatdar for deciding it afresh after holding a spot inspection. It is not in dispute that after the order of remand the Mamlatdar has already conducted a spot inspection on 12th October 2018.

7. The learned counsel for the petitioner pointed out that even in this spot inspection no road as claimed by the respondent has been found. I am afraid, it is not necessary to go into this aspect at this stage as the matter is still pending before the Mamlatdar. In any event, considering the overall circumstances, no case for interference is made out, the petition is without merit and it is accordingly dismissed with no order as to costs.

8. Rival contentions of the parties are left open.

C.V. BHADANG, J.

**Nilam
Kamble** Digitally signed by
Nilam Kamble
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