

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.7757/2018

Punjabrao Balasaheb Wagh and others

...Versus...

The Collector (Revenue), Washim and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders

Shri A.C. Dharmadhikari, Counsel for petitioners
Mrs. M.A. Barabde, AGP for respondent no.1
Shri R.A. Gupte, Counsel for respondent no.3

CORAM : AVINASH G. GHAROTE, J.

DATE : 03/03/2020

1. Heard Shri A.C. Dharmadhikari, learned Counsel for the petitioners, Mrs. Barabde, learned Assistant Government Pleader for the respondent no.1 and Shri Gupte, learned Counsel for the respondent no.3.
2. The present petition challenges the order dated 10/10/2017 passed by the Tahsildar, directing removal of obstruction to the right of way to Survey No.528, which is caused due to the petitioners' digging a five feet Nali in their lands, which order has been upheld by the Deputy Collector (Revenue), Washim, on 23/5/2018.
3. Shri A.C. Dharmadhikari, the learned Counsel for the petitioners submits that the impugned orders do not

consider the factual position, inasmuch as, the respondent no.3 has an alternate way available, nor the fact that the land belonging to the petitioners, i.e., Gat Nos.525 and 526 was never being used as an approach by the respondent no.3 to the land of Gat No.528. He submits that there is a river to the South side, whose water actually enters the lands of the petitioners, to control and contain which, the pit/Nali has been dug.

4. Shri Gupte, the learned Counsel for the respondent nos.3 invites my attention to the order dated 10/11/2003, passed by the Tahsildar, Risod, by which respondent no.3 was permitted to approach the land of Gat No.528 through the lands of Survey Nos.123 and 141, which are now Gat Nos.525 and 526. He further submits that in pursuance of the said order, the respondent no.3 has been using this way since year 2003, without any obstruction whatsoever from the petitioners and therefore, it was not permissible for the petitioners to have obstructed the way.

5. Having considered the rival contentions, and perused the record, it is apparent that by virtue of the order dated 10/11/2003, passed by the Tahsildar, Risod, the respondent no.3 was permitted to approach Gat No.528 through the lands of Gat Nos.525 and 526, which order has been in force since 2003 till 2017 and is still in force. This order specifically delineates the approach to the land of the respondent no.3 through the lands of the petitioners. This

order, though affecting the petitioners, has not been challenged for the last 15 years, in spite of the positive statement by the respondent no.3 that it is this road, which is permitted by the order dated 10/11/2003, which was being used by him. The plan at page 29 of the record dated 22/1/2018 depicts that the road to Gat No.528 is indeed passing through the land of the petitioners.

6. The order dated 10/10/2017 passed by the Tahsildar, Risod, takes into consideration, the spot inspection report as well as the report of the Talathi dated 20/7/2017, which indicates that the petitioners have obstructed the way by digging a five feet Nali, due to which the way has become impassable.

7. Though it is contended that the Nali was dug, to prevent the water from the river and rain, coming into the field, the location plan at page 24 demonstrates that the river is four fields beyond the land of Gat Nos.525 and 526. The Deputy Collector (Revenue), Washim in his order dated 23/5/2018, by relying upon the report of Talathi and the finding as recorded by the Tahsildar, also notes that the present petitioners in spite of being served, did not attend the proceedings before the Tahsildar, which was obviously to their own detriment and for which there is no cause shown whatsoever.

8. The further contention advanced by learned Counsel for the petitioners is that the application dated 30/5/2017 does

not conform to the provisions of Section 7 of the Mamlatdars' Courts Act, as such an application ought to be in the nature of the claim, is also without any substance, in light of provisions of Section 8 of the Mamlatdars' Courts Act, which permits the Mamlatdars to accept an application not conforming to the provisions of Section 7 of the Mamlatdars' Courts Act, as a plaint.

9. In light of the above position, I do not find any infirmity in the order dated 10/10/2017, as passed by the Tahsildar and the order dated 23/5/2018, as passed by the Deputy Collector (Revenue), Washim. The writ petition is, therefore, without any merits and is accordingly dismissed. No order as to costs.

JUDGE