

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

WRIT PETITION NO. 7490 OF 2019

Diwakar s/o Santoshrao Tijare

vs.

State of Maharashtra through Secretary Revenue Department, and others

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

Court's or Judge's orders

Shri. A. R. Ingole, counsel for petitioner.
Smt. Mrunal Naik, AGP for respondents No.1 to 3.
Shri. S. S. Deshpande for respondent No.4.

CORAM : MANISH PITALE J.

DATED : 22/01/2020

By this writ petition, the petitioner has challenged order dated 30/08/2019, passed by the respondent No.2, Deputy Collector, whereby revision application filed by the respondent No.4 has been allowed and the order of the Mamlatdars' Courts Act 1906 has been set aside. The respondent No.2 has directed that the prayer made by the respondent No.4 in his application before the Mamlatdar/Tahasildar is granted.

2. The respondent No.4 had approached the respondent No.3, Tahasildar under the provisions of the said Act claiming that there was a traditional right of way for access to his field, through the agricultural field owned by the petitioner.

3. In response, the petitioner stated before the Tahasildar that such a right of way did exist, but it was only a foot way and not a way through which the respondent No.4 could take his bullock carts. But, on the basis of the report of the Circle Inspector, which recorded that at the time when the spot inspection was being done, the way was not being actually obstructed, the Tahasildar came to the conclusion that no specific order was required in the matter and accordingly dismissed the application filed by the respondent No.4.

4. The said order was challenged by filing revision application under the said Act before the respondent No.2, Deputy Collector. By the impugned order, the revision application was allowed.

5. The learned counsel appearing for the petitioner invited attention of this Court to the order dated 13/11/2019 passed by this Court, while issuing notice in the present writ petition, whereby the parties were permitted to use the disputed way only as foot way and not for taking their bullock carts. It was directed that care must be taken that the standing crops are not damaged. The learned counsel for the petitioner submits that although the petitioner concedes to the position that there does exist a traditional right of way for the respondent No.4 to approach his agricultural field through the field of the petitioner, the same cannot be used for taking bullock carts. This position is seriously disputed by the learned counsel appearing for

respondent No.4, who has invited attention of this Court to sale deed of the year 1960 executed in his favour wherein traditional way is specifically mentioned. The learned counsel for the respondent No.4 has also relied upon the report of the Circle Officer, which also states that such traditional right of way does exist.

6. But, the material on record relied upon by the respondent No.4 does not clarify the position regarding the dispute raised by the petitioner to the effect that only a foot way was available and that the respondent No.4 was not entitled to take his bullock carts on the said traditional way. In this situation, the learned AGP appearing on behalf of respondents No. 1 to 3 submitted that appropriate documents were not referred by the authorities below and they were also not brought to the notice of the authorities by the disputing parties. It was submitted that under Section 165 of the Maharashtra Land Revenue Code, 1966, after the Code came into force, the Collector was to record, in regard to each village, about the right of way or other easements existing. It was submitted that if such material was before the authorities below, the exact nature of the right of way available to respondent No.4 could have been ascertained.

7. In view of the above, this Court is of the opinion that the impugned order deserves to be set aside and the matter needs to be remanded to the Tahasildar for fresh consideration.

8. Accordingly, the writ petition is partly allowed.

9. The orders passed by the Tahasildar and Deputy Collector are quashed and set aside. The matter is remanded to the Tahasildar for fresh consideration.

10. The parties are at liberty to place on record further documents in support of their respective stands, including the *Wazib-ul-arz* entries under Section 165 of the Code.

11. The Tahasildar is expected to specifically decide the dispute between the parties as to whether the traditional right of way, which is conceded by the petitioner was a only foot way or it was a way which could be used for transporting bullock carts.

12. The Tahasildar shall decide the application filed by respondent No.4 expeditiously and in any case within a period of **eight weeks** from today.

13. The parties shall appear before the Tahasildar on **30th January 2020**.

14. Writ petition is disposed of in above terms. No order as to costs.

JUDGE