

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

WRIT PETITION NO.510 OF 2020

(Sahebrao s/o Zabaji Wakode Vs. State of Maharashtra thr. its Secretary, Revenue Department, Mumbai and others)

*Office Notes, Office Memoranda of Coram,
 appearances, Court's orders of directions
 and Registrar's Orders.*

Court's or Judge's orders.

 Shri Rajesh Annaji Bagde, Advocate for Petitioner.
 Shri A.A. Madiwale, AGP for Respondent Nos.1 to 9.

CORAM: RAVINDRA V. GHUGE, J.

DATE: 27th JANUARY, 2020.

1] The petitioner has put-forth prayer clause (a) as under:-

(a) quash and set aside the order dated 14.10.2019 passed by respondent no.2 Collector, Buldhana, Tq. & Dist. Buldhana (Annexure-P29) who upheld the order dated 09.07.2018 (Annexure-P25) passed by respondent no.3 Sub Divisional Officer, Khamgaon, Tq. Shegaon, Dist. Buldhana, confirming that the direction or order passed by the respondent no.4 Tahsildar, Shegaon, Tq. Shegaon, District Buldhana that the same is passed in accordance with the Rules, in the interest of justice.

2] I have heard the learned Advocate for the petitioner and the learned AGP on behalf of respondent nos.1 to 9.

3] Respondent no.10 moved an application before

the Circle Officer on 12.03.2013. It is stated in the said application that the petitioners have blocked a path with thorns and shrubs. Request is made that the said path (*shiv danda*) should be cleared of the obstacles. It appears that the said application is filed under Section 5(2) of the Mamlatdars' Courts Act, 1906, though no provision under the said Act has been invoked. By communication dated 24.07.2015, the Circle Officer, Jawla Budruk has conveyed to the Tahsildar about the spot inspection and has recorded that a JCB was utilized in the presence of the farmers who own lands connecting with the said road, was utilized for clearing the obstacles and there has been no complaint.

4] The learned Advocate for the petitioner makes a solemn statement that no order was passed by the Tahsildar on the said application.

5] The above action was pursuant to the orders passed by the Tahsildar on 30.06.2015, and the petitioner falsely claims that he is unaware about any such order passed by the Tahsildar. However, he himself has placed a copy of the order dated 30.06.2015 passed by the Tahsildar, Shegaon at page no.64.

6] The petitioner approached the Sub-Divisional Officer under Section 257 of the Maharashtra Land Revenue Code, 1966 ('MLR Code') for challenging the order of the Tahsildar dated 30.06.2019. Vide the order dated 09.07.2018, the Sub-Divisional Officer has recorded that the JCB was used since the State had a policy of clearing the *shiv danda* roads which are actually paths belonging to the

government. The petitioner then approached the Additional Collector and by order dated 14.10.2019, the appeal preferred by the petitioner has been rejected keeping in view that Regular Civil Suit No.28/2007 is pending between the parties.

7] The learned Advocate for the petitioner submits that no such Regular Civil Suit No.28/2007 is pending between the parties. He however, submits that recently respondent no.10 has filed a regular civil suit against the petitioner in 2017 seeking clearing of the said path. Injunction has been granted in his favour and a miscellaneous civil appeal preferred by the petitioner is pending before the Appellate Court.

8] It is obvious that the petitioner has created this confusion, after the Tashildar passed his order on 30.06.2015, by carrying the matter before the Sub-Divisional Officer under Section 257 of the MLR Code. It is surprising that the Sub-Divisional Officer has not apply its mind and has blindly taken by the matter presuming that the earlier order passed by the Tahsildar could be under Section 143 of the MLR Code.

9] I find that since a regular civil suit between the parties is pending before the trial court in which injunction has been granted against this petitioner, the law settled by this Court in the matter of *Shrikant R. Sankanwar and others v. Krishna Balu Naukudkar* reported in 2003(3) *Bom.C.R. 45* concluding that the verdict of the civil court would bind revenue authority in so far as mutation entries

are concerned, the same analogy could made be applicable as a substantive suit is pending before the trial court and the rights of the party pertaining to said *shiv danda* which is subject-matter of the said suit, would be decided by the trial court.

10] In the peculiar facts recorded as above, this petition is disposed off and it is made clear that as per the petitioner, since the same path/*shiv danda* is subject-matter of the said suit, all contentions of the parties are kept open and the trial court shall consider the said issue on its own merits.

11] The petitioner's grievance that while clearing the *shiv danda*, the said road adjacent to his land has been damaged and portion of about half acre of his land was destroyed by the JCB due to which certain trees have been felled and the soil had also been damaged, would be subject to the result in the suit.

(Ravindra V. Ghuge, J.)