

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.4806 OF 2020

1. Gopalrao S/o. Baliramji Deshmukh
Age: 49 years, Occu.: Agriculture,
R/o. At Post Shapur,
Tq. and Dist.Parbhani.
2. Prabhakar S/o. Devidasrao Deshmukh
Age: 65 years, Occu.: Agriculture,
R/o. As above. ..Petitioners

VERSUS

1. Sopan S/o. Gulabrao Deshmukh
Age: 65 years, Occu.: Agriculture,
R/o. At Post.Shapur,
Tq. and Dist.Parbhani.
2. Vithal S/o. Ramkishan Deshmukh
Age: 30 years, Occu.: Agriculture,
R/o. As above.
3. Babarao S/o. Gulabrao Deshmukh
Age: 55 years, Occu.: Agriculture,
R/o. As above.
4. Bhagwan S/o. Dattrao Deshmukh
Age: 45 years, Occu.: Agriculture,
R/o. As above.
5. Manik S/o. Digambarrao Deshmukh
Age: 45 years, Occu.: Agriculture,
R/o. As above.
6. Tahasildar Parbhani,
Tq. and Dist.Parbhani.
7. Sub Division Officer, Parbhani,
Tq. and Dist.Parbhani. ..Respondents

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Advocate for Petitioners : Shri Vishant P.Kadam
Advocate for Respondent Nos.1 to 5 : Shri R.V. Gore
AGP for Respondent No.6 & 7 : Shri A.B.Chate

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CORAM : M.G.SEWLIKAR, J.

RESERVED ON : 17th July, 2021
PRONOUNCED ON : 30th July, 2021

JUDGMENT:-

1. This petition is preferred by the original defendants in proceeding No.प्रकरण क्र.2013/जमा—1/आरओआर/कावी—10 initiated by respondent No.1 before Mamlatdar's Court against petitioners for injunction restraining the petitioners from obstructing the enjoyment of way.

2. Facts leading to this petition can be stated in short as under:

Respondent No.1 is the owner and in possession of land Gut No.290 admeasuring 95R. Petitioners - original respondents Nos.3 and 1 respectively own Gut Nos.289 and 287 to the east of land of respondent No.1.

3. It is further alleged that there is a cart road between land Gut Nos.298, 289 and 287 which is used by respondent No.1 to access respondent No.1's land Gut No.290. This way is being used since long. Respondent No.1 does not have

any other alternative road to access his land. Petitioners have been obstructing respondent No.1 from accessing this road owing to which respondent No.1 is unable to access his land. On 25-08-2013 at about 10:00 a.m. to 10:30 a.m. petitioners obstructed bullock cart of respondent No.1 from proceeding to his field from this cart road. Therefore, respondent No.1 was constrained to file suit before the Mamlatdar's Court.

4. Petitioners did not appear before the Mamlatdar's Court. Talathi Sajja Arvi drew panchanama. Tahsildar, Parbhani decided this matter by his order dated 21-05-2015 by which he held that the road as alleged by respondent No.1 is in existence and respondent No.1 was obstructed by the petitioners. He, therefore, restrained the petitioners from obstructing respondent No.1 from accessing the disputed road by respondent No.1. This order was challenged before the Additional Collector, Parbhani, who by his order dated 01-07-2015, remanded the matter to the Tahsildar directing him to personally inspect the spot and hold *denovo* enquiry. Thereafter, Naib Tahsildar, Parbhani again passed the same order. This order was also challenged before the Sub-Divisional Officer. This time also he remanded the matter. Thereafter, the Tahsildar visited the spot and drew spot panchnama and thereafter he allowed case No.प्रकरण क.

2017/आरओआर/कावि/00002 and restrained the petitioners from enjoying the disputed road. This order was challenged before the Sub-Divisional Officer, Parbhani, who confirmed the order of Tahsildar by his order dated 30-11-2019. This order is impugned in this writ petition.

5. Heard Shri V.P.Kadam, learned counsel for the petitioners, Shri R.V.Gore, learned counsel for respondent Nos.1 to 5 and Shri A.B.Chate, learned AGP for respondent Nos.6 and 7.

6. Shri Kadam, learned counsel for the petitioners submitted that the Mamlatdar's Court has no jurisdiction to issue injunction as is contended by the petitioners. He submitted that Section 5 of Mamlatdar's Courts Act does not authorize the Mamlatdar to issue injunction. He further submitted that testimonies of witnesses who acted as Panch are not believable. He submitted that the Tahsildar again drew panchanama on 28-05-2018 for no reason and at that time he had not given notice of panchanama to the petitioners and behind their back panchanama was drawn. He submitted that no road exists in land Gut Nos.287, 289 and 298 as alleged by respondent No.1. He submitted that without application of mind, the learned Tahsildar issued injunction and without applying mind Sub-Divisional Officer confirmed the said

order. He submitted that both the Courts below placed reliance on Section 143 of the Maharashtra Land Revenue Code, 1966 (hereinafter referred to as 'the M.L.R. Code'). He submitted that the powers under Section 143 of the M.L.R. Code could be used for giving of road. He submitted that proceedings under Section 143 of the M.L.R. Code and under Section 5 of the Mamlatdar's Courts Act, 1906 are distinct. Therefore, he prayed for dismissal of the impugned orders.

7. Shri Gore, learned counsel for respondent Nos.1 to 5 argued that second panchanama was prepared as law mandates that Mamlatdar should first visit the spot of the incident and drew panchanama. That was the reason why Mamlatdar had paid visit and drawn panchanama of the disputed road. He submitted that no illegality is pointed out to cause interference in the orders passed by both the Courts below.

8. On perusal of the papers annexed with the petition and the Judgments of both the Courts below, it is evident that both the Courts have given cogent reasons for arriving at the conclusion that there exists road in Gut Nos.287, 289 and 298 by which respondent No.1 can have access to his land Gut No.290. Petitioners have produced copies of panchanama dated

28-05-2018. Shri Kadam, learned counsel for the petitioners fairly concedes that petitioners were present at the time of drawing of panchanama on 28-05-2018. Therefore, reliance placed on the case of ***Sudhir Yashwant Dhangade Vs. Ankush Kashiram Bole and Others [2019 SCC OnLine Bom.18]*** to the effect that, "*no evidence affecting a party is admissible against that party unless the latter has had an opportunity of testing its truthfulness by cross-examination*" cannot be accepted. This is not the fact situation in instant case. Petitioners were present at the time of drawing of panchanama.

9. Panchanama dated 19-05-2017 shows existence of road between Gut Nos.287, 289 and 298. Tahsildar has also prepared a sketch map which indicates that there is a road between Gut Nos.287, 289 and 298 in east-west direction, which goes to Gut No.290. Learned Tahsildar has observed in his order that existence of road is also evident from 7/12 extract, which shows that the total area of Gut No.290 is excluding the road. This clearly indicates the existence of road. Witnesses have also stated that road is in existence and was being used by respondent no.1. Panchanama dated 28-05-2018 also shows the same position.

10. For issuing injunction what Mamlatdar under the Mamlatdar's Courts Act has to see is whether there exists any road by which a landholder can have access to his land and whether obstruction was caused to the enjoyment of this road. Both these aspects have been proved by respondent No.1. Panchanama drawn by the Tahsildar on 28-05-2018 also shows that there is no road from Gut Nos. 281, 284 and 291, 253 and 284, 252.

11. The argument that, it was not necessary for the Mamlatdar to again visit the spot and draw panchanama was totally uncalled for, cannot be accepted. Mamlatdar is required to pay visit to the spot and draw panchanama by virtue of Section 19(2) of the Mamlatdar's Courts Act. In terms of these provisions, he made spot inspection and prepared the panchanama.

12. Shri Kadam, learned counsel for the petitioners submitted that proceedings under Section 143 of the M.L.R. Code are to be initiated only for giving of road. However, Mamlatdar conducted proceeding under Section 5 of the Mamlatdar's Courts Act. Both are distinct proceedings. For that purpose, he placed reliance on the case of ***Krushna s/o. Damaji Choudhari and another Vs. Additional Commissioner, Nagpur Division and others [2012(1) Mh.L.J. 795]***. This authority has no application to the facts of

the case at hand as the proceeding is initiated under the Mamlatdar's Courts Act for injunction restraining the petitioners from obstructing respondent No.1's way to his land.

13. In view of what is discussed herein above, it is evident that both the Courts below did not commit any error in arriving at the conclusion. Therefore, the petition is devoid of any merit. Hence, it is dismissed with no order as to costs.

(M.G.SEWLIKAR)
JUDGE

Later on :

14. Shri V.P.Kadam, learned counsel for the petitioners seeks two months time to prefer appeal against the decision of this Court and continuation of interim relief till then.

15. Considering the nature of the dispute, prayer is rejected.

(M.G.SEWLIKAR)
JUDGE

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