

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5703 OF 2016

1. Dattatray Eknath Markad
Age: 40 years, Occ. Agri.,

2. Satish Eknath Markad
Age: 38 years, Occ. Agri.,

3. Nitin Eknath Markad
Age: 36 years, Occ. Agri.,

4. Kesharbai Eknath Markad
Age: 60 years, Occ. Agri.,
R/o. Madhi, Tq. Pathardi,
Dist. Ahmednagar.

... PETITIONERS

VERSUS

1. Sudhir Baurao Markad
Age: 57 years, Occ. Agri.

2. Dadasaheb Vitthal Markad
Age: 42 years, Occ. Agri.

3. Vithoba Pandharinath Markad
Age: 80 years, Occ. Agri.

4. Vilas Sahebrao Markad
Age: 47 years, Occ. Agri.

5. Sahebrao Dattu Markad
Age: 60 years, Occ. Agri.

6. Narayan Dattu Markad
Age: 55 years, Occ. Agri.
7. Narhari Madhav Markad
Age: 60 years, Occ. Agri.
8. Dilip Ramrao Chothe
Age: 65 years, Occ. Agri.
9. Manda Sudhir Markad
Age: 45 years, Occ. Agri.
10. Shivaji Bapurao Markad
Age: 57 years, Occ. Agri.
11. Rakhmaji Guru Markad
Age: 68 years, Occ. Agri.
12. Haribhau Genu Markad
Age: 65 years, Occ. Agri.
13. Dadasaheb Shivram Markad
Age: 45 years, Occ. Agri.
14. Parvati Shankar Markad
Age: 65 years, Occ. Agri.
15. Ramnath Bhaguji Markad
Age: 60 years, Occ. Agri.
16. Bhanudas Govind Markad
Age: 75 years, Occ. Agri.
17. Mohan Ambadas Markad
Age: 62 years, Occ. Agri.

18. Murlidhar Ambadas Markad

Age: 60 years, Occ. Agri.

19. Rajendra Gopinath Markad

Age: 38 years, Occ. Agri.

20. Baban Gopinath Markad

Age: 42 years, Occ. Agri.

21. Sakubai Murlidhar Markad

Age: 60 years, Occ. Agri.

22. Suryabhan Gunaji Kaldate

Age: 65 years, Occ. Agri.

23. Haribhau Gunaji Kaldate

Age: 70 years, Occ. Agri.

24. Dilip Raosaheb Markad

Age: 50 years, Occ. Agri.

R/o: Madhi, Tq. Pathardi,
District Ahmednagar.

25. The Tahsildar

Pathardi, Tq. Pathardi,
District. Ahmednagar.

26. The Sub-Divisional Officer,

Pathardi Division Pathardi.

... RESPONDENTS

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Advocate for the Petitioners : Mr. Narayan B. Narwade

Advocate for the Respondent Nos.1, 2 & 14: Mr. D. R. Markad

AGP for the Respondent Nos.25 & 26 – State: Mrs. V. S. Chaudhari

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CORAM : N. B. SURYAWANSHI, J.

DATE : 18th November, 2021

JUDGMENT :

1. **RULE.** Rule made returnable forthwith. Heard finally with the consent of the respective parties.

2. This Petition takes exception to the order dated 29.10.2015 passed by the Tahsildar, Pathardi in Rasta Case No.17/2015, thereby granting right of way to the Respondent Nos.1 to 24 and the order dated 05.04.2016 passed by the Sub-Divisional Officer, Pathardi in R.T.S. Revision No.157/2015 which confirmed the order passed by the Tahsildar, Pathardi.

3. Respondent Nos.1 to 24 filed Rasta Case No.17 of 2015 under Section 5 (2) of the Mamlatdar Court Act, 1906 (for short “the said Act”) contending that 60 years old road passing through the land Gut Nos.558, 559 & 560 of the Petitioners, which was being used by them to approach their respective lands has been closed by the Petitioners. The Respondents therefore prayed for removing the obstruction and clearing the road.

Upon notice, the Petitioners appeared and resisted the proceeding by filing say. The Petitioners contended that there is alternate

road available to the Respondents from the western bandh of Gut Nos. 532 to 542 which the Respondents are using.

The Tahsildar, after considering the spot inspection panchnama, came to the conclusion that the road which was claimed by the Respondents appears to be an old road, which was being used by the Respondents since long. The Tahsildar therefore allowed the application filed by the Respondents and directed the Petitioners to open the road to enable the Respondents to go to their respective agricultural lands, from the Petitioner's Gut Nos. 558, 559 & 560. The Petitioners unsuccessfully challenged the order passed by the Tahsildar by filing R.T.S. Revision No.157/2015 before the Sub-Divisional Officer, Pathardi.

4. Heard the learned advocate for the Petitioners, learned advocate for the Respondent Nos.1, 2 & 14 and learned AGP for the Respondent Nos. 25 & 26-State.

5. The learned advocate for the Petitioners strenuously submitted that the impugned order passed by the Tahsildar is erroneous and the same is based on the spot inspection which was not actually done in the presence of the Tahsildar. The panchas, who have signed the spot panchanama, are the interested persons and having political background. Hence, the said spot panchnama ought not to have been relied upon. He

submitted that there is an alternate way available to the Respondents to approach their respective fields. Therefore, the Tahsildar was not justified in allowing the right of way to the said Respondents. The Sub-Divisional Officer has failed to appreciate the contentions raised by the Petitioners in the revision and has erroneously rejected the revision. He further submitted that taking into consideration the map of the District Inspector of Land Records (DILR), the Respondents have alternate way available to approach their respective fields. Therefore, the impugned order passed by the Tahsildar is liable to be quashed and set aside and the petition deserves to be allowed.

6. The learned advocate for the Respondent Nos.1, 2 & 14 as well as the learned AGP for the Respondent Nos.25 & 26/State, on the other hand, supported the impugned orders passed by the Tahsildar as well as by the Sub-Divisional Officer. They submitted that, the Tahsildar was justified in passing the impugned order on the basis of spot inspection, wherein the actual situation on the spot was noticed by the Tahsildar. In that view of the matter, there is no substance in the petition and the petition is liable to be dismissed.

7. In the spot inspection report (Exhibit-C) prepared by the Tahsildar, it is mentioned that there was usage of the road and the said road was closed by the Petitioners. It is further mentioned that 10 feet

wide road was found to be closed till the agricultural land of Vilas Raosaheb Markad with the help of clay. The Tahsildar found during inspection that the road claimed by the Respondents was in use since long. In view of the spot inspection report, the Tahsildar was justified in allowing the application filed by the Respondents and granting them right of way.

8. The Sub-Divisional Officer, after noticing that the usage of road which was being used by the Respondents since long was found to be closed by the Petitioners, rejected the revision being merit-less. Cogent reasons are assigned while rejecting the revision and the order passed in the revision cannot be faulted with.

9. Though the learned advocate for the Petitioners vehemently submitted that alternate way is available to the Respondents to approach their respective fields, however, he was unable to point out the exact alternate way available to the Respondents from the record or from the village map (Exhibit-A). On the contrary, village map (Exhibit-A) supports the case of the Respondents and the Tahsildar was justified in granting the right of way claimed by the Respondents.

10. The Petitioners failed to substantiate their contention that the panchas, who have signed the spot panchnama, are the interested persons and have political background and the spot inspection

panchnama was conducted in absence of Tahsildar, Pathardi. The said argument of the Petitioners is, therefore, unacceptable.

11. In the light of aforesaid reasons, there is no merit in the challenge raised by the Petitioners to the impugned order passed by the Tahsildar, Pathardi. No case is made out by the Petitioners to interfere in the impugned orders in extraordinary writ jurisdiction. Writ petition is, therefore, dismissed. Rule discharged. No order as to costs.

12. At this stage, learned advocate for the Petitioners submits that interim order of *status quo* is operating in favour of the Petitioners since 2016 and the same may be continued, so as to enable the Petitioners to approach the Apex Court.

13. Interim relief to continue for a period of four weeks from today.

(N. B. SURYAWANSHI, J.)

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