

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

14 WRIT PETITION NO.7671 OF 2021

SHAIKH SAMAD SHAIKH BUDHAN AND OTHERS
VERSUS
SHAIKH MAZAHAR SHAIKH AMIN AND OTHERS

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Mr. P.F. Patni, Advocate for the petitioners.
Mr. P.V. Ambade, Advocate for respondent No.1.
Mr. S.W. Munde, A.G.P. for the State.

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CORAM : **AVINASH G. GHAROTE, J.**

DATE : 19-07-2021.

ORDER :

1. Heard Mr. Patni, learned Counsel for the petitioners. Mr. Patni, inviting my attention to prayer clause (b) of the application under Section 5 of the Mamlatdars Court's Act, submits that the prayer does seek a direction viz-a-viz the land of gut no. 490 and 495. He further submits, that there is nothing on record to establish existence of the way which was claimed by the plaintiff. He further submits, that no evidence was led, nor an opportunity to lead the evidence was given to the present petitioner by the Mamlatdar, inspite of the petitioner, having pleaded, that there was an alternate road available.

2. A perusal of the application under Section 5 at page 14 of the record, specifically raises a plea, that the plaintiffs who are the owners of gut no. 491 and 492, had a road from the boundary of Gut

No. 490, which has been obstructed by levelling the Nala as a result of which, the same has become unpassable which obstruction was required to be removed.

3. The learned Mamlatdar, in his impugned order dated 11.02.2020, found that the spot inspection made on 02.12.2019 and the consequent report, indicated, that there was a road in existence, from the boundary between the lands of gut no. 490 and 495, which had been obstructed by the owner of gut no. 490, by digging and levelling it. It was further found, that the natural course of the water way of the village, had also been obstructed by levelling and closing the same as a result of which because of seepage the land of gut No.491 and 492 have become unusable for taking crops, on the basis of which finding, the obstruction was directed to be removed, which finding has been confirmed by the Revisional Court. The contention of Mr. Patni, learned Counsel for the petitioner, that there is no material on record, to demonstrate the existence of the Nala is therefore without any substance, as the spot inspection report, categorically demonstrates the same. That apart, the plea that no opportunity to lead evidence, to establish the alternate way was given by the Mamlatdar, is without any merits, for the reason that Mr. Patni, learned Counsel for the petitioner candidly admits that such an application was never made before the learned Mamlatdar.

4. It is axiomatic to state that when a plea of availability of

alternate road is taken, it is necessary for the person taking the plea, to establish it, and he cannot merely sit upon the plea of the plaintiff and the possibility of the plaintiff failing in his plea. This being the position the contention, that opportunity was not granted does not hold any water. It is further material to note, that the village map at page 25, indicates, that on the east and south of the land of gut nos.491 and 492 there is a hill most of the way and after some land, the nature of which is not indicated, there is the Pandan of Mauja Shirasmal. The village map, however, does not indicate that the land of gut Nos. 491 and 492 is approachable from this boundary. Nor in absence of any such evidence being led, can the existence of such a way, be presumed as is contended by learned Counsel Mr.Patni appearing for the petitioner. I therefore, do not see any reason to interfere with the impugned orders.

5. The petition is thus, without any merits and is accordingly dismissed.

(AVINASH G. GHAROTE, J.)

VD_Dhirde