

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7312 OF 2018

1. Dilip s/o. Krishna Patil,
Age 56 years, Occu. Agril.,
2. Ravindra s/o. Krishna Patil,
Age 50 years, Occu. Agril.,
3. Krishna s/o. Dilip Patil,
Age 26 years, Occu. Agril.,
4. Amol s/o. Dilip Patil,
Age 26 years, Occu. Agril.,
5. Sarala w/o. Dilip Patil,
Age 46 years, Occu. Agril.,

All R/o. Pimpri (Budruk),
Taluka Chalisgaon, District Jalgaon

.. Petitioners
(Original Defendants)

Versus

1. Sub Divisional Officer,
Chalisgaon Division, District Jalgaon.
2. Tahsildar, Chalisgaon,
Taluka Chalisgaon, District Jalgaon
3. Daga s/o. Kashinath @ Kashiram Patil,
Age 75 years, Occu. Agril.,
R/o. Shirasgaon, Taluka Chalisgaon,
District Jalgaon
4. Hilal s/o. Malu Patil,
Age 73 years, Occu. Agril.,
R/o. Pimpri (Budruk),
Taluka Chalisgaon, District Jalgaon.

.. Respondents
(Original Applicants)

...
Mr. Paresh B. Patil, Advocate for Petitioners
Mrs. V. S. Choudhari, Assistant Government Pleader for
Respondents no. 1 and 2 - State
Mr. L. V. Sangit, Advocate for Respondents no. 3 and 4
...

CORAM : NITIN B. SURYAWANSHI, J.

RESERVED ON : 16-12-2021

PRONOUNCED ON : 21-12-2021

JUDGMENT :-

Rule. Rule made returnable forthwith. Heard finally with the consent of learned Advocates for the parties.

2. This petition is directed against the order dated 15.05.2018 passed by Sub Divisional Officer, Division Chalisgaon, in Vahivat Revision No. 12/2016 thereby reversing the decision dated 31.12.2015 passed by Mamlatdar, in Vahivat/Case/15/2014 and thereby allowing the said Revision filed by respondents no.3 and 4.

3. Respondents no. 3 and 4 are the applicants, whereas, the petitioners are the non-applicants/defendants in Vahivat Case No. 15/2014 filed before respondent no.2 Mamlatdar. Respondents no. 3 and 4 filed said Vahivat case claiming that, the customary road, passing through land Gat Nos. 53/1, 53/2/A/1, 53/2/A2 and 53/2/A/3 situated at Pimpri (Budruk), Taluka-Chalisgaon, District-

Jalgaon, to approach their field Gat No. 37 and 36, which was blocked by the petitioners, be opened as the petitioners are prevented from using the said road by the respondents. Pursuant to said application, site inspection was carried out in presence of the petitioners and respondents no.3, 4 and their lawyers. A panchnama was prepared on 26-11-2014, noting the factual position on the site. In support of their case, respondents no. 3 and 4 submitted affidavits of adjoining agriculturists. The petitioners also submitted affidavits of some of the agriculturists. After hearing the parties, respondent no. 2 Mamlatdar rejected application filed by respondents no. 3 and 4. The non-applicants/respondents, therefore, challenged decision of Mamlatdar, by filing RTS/Revision/No.12/2016 before respondent no.1 - Sub Divisional Officer, Chalisgaon Division, District Jalgaon, which came to be allowed. The petitioners-original non-applicants are aggrieved by this order.

4. Heard the learned Advocate for the petitioners, the learned Assistant Government Pleader for respondents no. 1 and 2 and the learned Advocate for respondents no. 3 and 4. Perused the record made available by the learned Assistant Government Pleader.

5. Learned Advocate for the petitioners assailed the impugned order passed by respondent no.1 contending that Mamlatdar was

justified in rejecting the case of the respondents by giving cogent reasons. The order passed by Mamlatdar is based on the site inspection. It was held that the respondents have failed to produce in any evidence showing that there was a customary way from the common bandh boundary Gat No. 53/2/A/1 and 53/1. He further submitted that the respondents no. 3 and 4 only submitted the statements of agriculturists, whereas, the petitioners have submitted affidavits of the adjoining agriculturists, which carry more evidentiary value, and therefore, those were rightly taken into consideration by Mamlatdar, while rejecting the case of the respondents no. 3 and 4.

. He further submitted that, respondent no.1 has erred in allowing the Revision application filed by the respondents by giving erroneous reasons. The site panchnama was misread and misconstrued by respondent no.1 while allowing the case of the respondents no. 3 and 4. He, therefore, submits that the impugned order passed by respondent no.1 is unsustainable.

. In support of his submissions, he relied in (i) ***Ramchandra Sakharam Mahajan Versus Damodar Trimbak Tanksale (Dead) and others, (2007) 6 Supreme Court Cases 737***, and (ii) ***Union of India and others Versus Maruti Madhav Kerulkar and others, 2002(4) Mh.L.J. 73***.

6. On the other hand, learned Advocate for respondents no. 3 and 4 submitted that the Vahivat case was filed on 09-07-2014 and site inspection panchnama was carried on 26-11-2014 i.e. after a period of four months. During this period, the petitioners ploughed the customary road and have taken cotton crop there. Therefore, the customary road could not be noticed in the site inspection panchnama. This aspect is properly appreciated by respondent no.1, and therefore, respondent no.1 was justified in allowing the revision. He further submitted that, the land of respondents no.3 and 4 could not be cultivated because of the obstruction on the part of petitioners since 2014. Further submission is that, there is no citation relied on by the petitioners under the Mamlatdar's Courts Act, 1906 (in short, "the Act"). Hence, the rulings relied by the petitioners are not applicable to the facts of the present case. He, therefore, submitted that there is no substance in the petition and the same may be dismissed.

7. The learned Assistant Government Pleader for respondents no.1 and 2 supported the impugned order by submitting that, the respondents no.3 and 4 had no alternate way, which is clear from the spot panchnama. The adjoining farmers have given statements that there was a customary way, hence, respondent no.1 was justified in passing the impugned order. The writ petition, therefore, be dismissed.

8. Vahivat Case No. 15 of 2014 was filed by the respondents no.3 and 4 on 09-07-2014. Admittedly, site inspection/panchnama was conducted on 26-11-2014 i.e. after almost four months after filing of the vahivat case. The panchnama also supports the contention of respondents no. 3 and 4 that the customary road was ploughed by the petitioners and they have sown cotton crop there. As the panchnama was conducted after four months, the customary road could not be noticed in the panchnama. From the record, there appears substance in the contention of respondents no. 3 and 4 that the petitioners ploughed the customary road and have sown cotton crop there. At the time of site inspection, when the alternate way suggested by the petitioners was inspected, no alternate customary way was found there. The statements of adjoining land agriculturists produced on record by respondents no. 3 and 4 support their contention that they do not have any alternate road except the one claimed by them in the Vahivat case. Though, the petitioners have also filed statements/affidavits of some of the adjoining land agriculturists, however, in their statements, there is no reference about the alternate way available to the respondents.

9. Respondent no.1 has rightly come to the conclusion that the petitioners have ploughed the customary road and sown the crop

there. Respondent no.1 has rightly come to the conclusion that the site inspection/ panchnama does not show as to which alternate way is available to respondents no. 3 and 4 to approach their field. He has also taken into consideration the fact that the agricultural land of the agriculturists could not be cultivated from 2014-15. Taking into consideration the reasons given by respondent no.1 in the impugned order, no fault can be found in the order impugned in the present petition.

10. In *Ramchandra Sakharam Mahajan* (supra), the Honourable Apex Court was considering the case in which suit was filed for recovery of possession on the strength of title and it was held that the burden is on the plaintiff to establish that title. This ruling is not applicable to the facts of present case.

11. In *United of India* (Supra), learned Single Judge of this Court has held that in the facts of that case that Section 5(2) of the Act empowers the Mamlatdars to issue orders of injunction and not declarations regarding the customary rights. In this case, in a suit for declaration and perpetual injunction, the trial Court relied upon the form of certificate issued by Tahsildar, which was cancelled by Sub Divisional Officer at the time of granting injunction. The same was set aside by this Court. Such are not the facts of the present case.

12. For the afore-stated reasons, there is no merit in the challenge raised by the petitioners in the present writ petition. Writ petition, therefore, fails and the same is hereby dismissed. Rule is discharged. No order as to the costs.

(NITIN B. SURYAWANSHI)
JUDGE

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