

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

WRIT PETITION NO. 7743 OF 2017

Chandrakant s/o Ramrao Patil
Age : major, occ : agri.,
R/o Jevali, Taluka Lohara,
District Osmanabad.

Petitioner.

Versus

1. Hon'ble Minister,
For Revenue and Forest
Department, Mantralaya,
Mumbai.
2. Addl. Commissioner,
Aurangabad Division,
Aurangabad.
3. The Addl. Collector, Osmanabad,
Collector Office, Osmanabad.
4. Sub-Divisional Officer,
Osmanabad,
District Osmanabad.
5. The Tahasildar Lohara,
Tahsil Office Lohara,
District Osmanabad.
6. Basavanappa Shrimantappa Sarne
Age : major, occ : agri.,
R/o Javeli, Taluka Lohara,
District Osmanabad.

Respondents

Mr. Mahesh Deshmukh, Advocate holding for
Mr. S.B. Choudhari, Advocate for petitioner.
Mr. S.B. Pulkundwar, A.G.P. for respondents No.1 to 5.
Mr. P.R. Katneshwarkar, Advocate holding for
Mr. Apparao Yenegure and Mr. Ashok Tajane, Advocates for
respondent No.6.

WITH

CIVIL APPLICATION NO. 1087 OF 2021
IN
CIVIL APPLICATION NO. 290 OF 2021
IN
WRIT PETITION NO. 7743 OF 2017

Sarika Venkat Weldode
Versus
Basavanappa Shrimantappa Sarne and others

Mr. A.V. Indrale Patil , Advocate for applicant.
Mr. P.R. Katneshwarkar, Advocate holding for
Mr. Apparao Yenegure and Mr. Ashok Tajane,
Advocates for respondent No.1.
Mr. S.B. Pulkundwar, A.G.P. for respondents No.2 to 6.
Mr. Mahesh Deshmukh, Advocate holding for
Mr. S.B. Choudhari, Advocate for respondent No.7.

CORAM : N.J. JAMADAR, J.

Reserved on : 3rd March 2021.

Pronounced on : 25th March 2021.

JUDGMENT

1. Rule. Rule made returnable forthwith and with the consent of learned Counsel for the parties, heard finally at the stage of admission.

2. The legality, propriety and correctness of the judgment and order in Appeal No. 2016/435/J-7 dated 26th April 2017 passed by the Minister (Revenue), whereby the revision preferred by respondent No. 6 herein under Section 257 of the

Maharashtra Land Revenue Code, 1966 (the Code 1966) came to be allowed by setting aside the orders passed by Divisional Commissioner, Aurangabad in Revision No. 83/2013 and Additional Collector, Osmanabad in RTS Appeal No. 59/165, and the order passed by Tahsildar Lohara dated 25th November 2010 granting way over boundaries of Gut No. 240 to 247 and 248 of village Jevali, Taluka Lohara to respondent No. 6 came to be restored, is assailed in this petition.

3. The background facts leading to this petition can be stated in brief as under :

The petitioner is the holder of agricultural land bearing Gut No.248 situated at Jevali, Taluka Lohara. Respondent No. 6 claims to be the holder of the land bearing Gut No. 242 situated on the eastern side of the petitioner's land. The land bearing Gut No.242 and adjoining lands, bearing Gut Nos. 244 and 245, are located on the boundary road of village Yenegur. Respondent No.6 as well as the adjoining land holders are using the said boundary road between the two villages for access to their respective agricultural land.

4. Respondent No. 6 made an application to the Tahsildar with allegations that he had right of way over the boundaries of Gut No.248 and 240/241. The petitioner herein

had caused obstruction to the enjoyment of the said way over the boundaries of the said agricultural lands. Pursuant to the said application, the Tahsildar directed the Circle Inspector to cause an inspection and submit report. The Circle Inspector inspected the lands in question and the adjoining site. A spot inspection report was submitted on 7th July 2010. The Circle Inspector, *inter alia*, recorded that the land of respondent No. 6 was centrally located. Though there was a village boundary road on the eastern side of Gut No. 242, yet as it ran through river bed, the said road was not available for the use of respondent No. 6. Since Gut No. 242 belonging to the petitioner was close to Jevali road, it may be appropriate to carve out a way over the boundary of Gut No. 242.

5. The Tahsildar, after holding an inquiry and upon perusal of the spot inspection report, was persuaded to grant way over the boundaries of Gut No. 240 to 247 and 248 to respondent No. 6 to access Gut No. 242, under the provisions of Section 143 of the Code 1966. The Tahsildar was of the view that the said road was in existence and use. Conversely, the alternate way on the village boundary of Yenegur was not available throughout the year as it was situated in the river bed.

6. The petitioner preferred an appeal bearing ROR Appeal No. 622/2011 before the Sub-Divisional Officer, Osmanabad. By a judgment and order dated 31st August 2012, the appeal came to be dismissed.

7. Being further dissatisfied, the petitioner preferred second appeal, bearing ROR Appeal No. 165 / 2012 before the Collector, Osmanabad. By a judgment and order dated 31st January 2013, the Additional Collector, Osmanabad allowed the appeal holding, *inter alia*, that in the spot inspection report of the Circle Inspector, the existence of an alternate way, on the eastern side of the land of respondent No. 6, has been recorded. Moreover, the holders of adjoining lands bearing Gut Nos. 245, 247 and 244 have sworn affidavits to the effect that such a way is available. The orders passed by lower authorities were, thus, set aside and the mutation entry No. 1116 recording the said right of way was ordered to be cancelled.

8. Being aggrieved by the said judgment and order, in the second appeal, respondent No. 6 invoked revisional jurisdiction of the Divisional Commissioner. By a judgment and order dated 22nd August 2016 in Revision No. 83/2013, the Additional Commissioner, Aurangabad concurred with the findings of the second Appellate Authority and dismissed the

revision.

9. Respondent No.6 preferred second Revision before the State Government under Section 257 of the Code 1966. By the impugned judgment and order, the Minister (Revenue) was persuaded to allow the revision. Two factors seem to have weighed with the Minister; one, spot inspection revealed that there was a way over the boundaries of Gut Nos. 240 to 247 and 248 and, two, the road over village boundary of Yenegur was not available throughout the year as the river flowed therefrom. Thus, the orders passed by the Divisional Commissioner and the Additional Collector, Osmanabad were set aside and the order passed by the Tahsildar granting way over the boundary of Gut No. 248, came to be restored. The petitioner has, thus, invoked the writ jurisdiction of this Court.

10. I have heard Mr. Mahesh Deshmukh, learned Counsel holding for Mr. S.B. Choudhary, learned Counsel for the petitioner, Mr. Pulkundwar, learned Addl. Government Pleader for respondent Nos.1 to 5 and Mr. Katneshwarkar, learned Counsel for respondent No. 6 at length. With the assistance of the learned Counsels, I have perused the material on record including the spot inspection report.

11. At the outset, it may be apposite to note that in the wake of the controversy and submissions that on the east side of the land of respondent No. 6 a Kolhapuri Bandhara (Kolhapuri type weir) was being constructed, by an order dated 12th December 2018, this Court directed respondent No.5 Tahsildar, Lohara to cause an inspection of the entire site as was reflected in the sketch map in the light of the statements of the litigating sides and thereafter submit a freshly drawn sketch map so as to indicate the geographical situation which then stood. The Tahsildar Lohara was also directed to file a short affidavit along with the sketch map.

12. In conformity with the aforesaid order, respondent No. 5 caused inspection of the site and prepared a map with the assistance of the officers of Land Records Department. In the affidavit sworn on 11th January 2019, Mr. Rahul Patil, the then Tahsildar Lohara, has affirmed that the road on the eastern side of the land bearing Gut Nos. 242, 244 and 245 can be made functional after levelling it and put to use again. As regards the way shown on the western side i.e. disputed way, the Tahsildar on the basis of statements of adjoining land holders opined that it was not a customary path and was never available to respondent No. 6 prior to the litigation. A copy of the map,

prepared consequent to the inspection pursuant to the orders of this Court, is annexed to the said affidavit.

13. It would be advantageous to immediately notice that in the said map, on the eastern side of the lands bearing Gut Nos. 242, 244 and 245, there is a river bed. Abutting the said river bed, the existence of patches of way are indicated. The existence of the Nala Bund (Kolhapuri type weir) is also shown at two places. As regards the disputed way, its existence is shown on the boundaries of the land bearing Gut Nos. 240 and 248 (petitioner's land).

14. In the backdrop of the aforesaid situation at the site, as borne out by the site map, the learned Counsels have advanced the submissions.

15. Mr. Deshmukh, the learned Counsel for the petitioner would urge that the Minister committed a grave error in upsetting the finding of fact in exercise of limited revisional jurisdiction. Emphasis was laid on the fact that the Minister was exercising jurisdiction as a second revisional authority. The matter could not have been appraised on facts as if the Authority was exercising an appellate jurisdiction, urged Mr. Deshmukh. Secondly, according to Mr. Deshmukh, the claim of

respondent No.6 for a right of way over the boundaries of the land of petitioner, was approached by the Tahsildar and the first appellate authority from a completely wrong perspective. Amplifying the submission, Mr. Deshmukh would urge that the existence of the way on the boundary of village Yenegur, on the eastern side, is rather indubitable. There is material to indicate that the adjoining land holders of respondent No. 6, bearing Gut Nos.244, 245 and 241, are using the very same access for their respective lands. Once, the existence of an alternate way is established, the authorities could not have granted a right of way over the boundaries of the adjoining land holders, for the sake of convenience only, as Section 143 of the Code 1966 mandates that the Tahsildar shall have regard to the needs of the cultivators for reasonable access to their field. The authorities, thus, got jurisdiction to grant right of way where the reasonability of the claim is made out and not for the sake of convenience, urged Mr. Deshmukh. An endeavour was made by Mr. Deshmukh to take the Court through the statements of the adjoining holders recorded during the course of the spot inspection to lend support to the submission that the way in question over the boundary of the petitioner's land was never in existence.

16. In opposition to this, the learned A.G.P. supported the impugned judgment and order. It was urged that the revisional authority was justified in reversing the orders passed by the Divisional Commissioner and the Additional Collector as the crucial aspect of availability of the way on the eastern side of the land of respondent No. 6 was not considered by those authorities.

17. Mr. Katneshwarkar, the learned Counsel for respondent No.6 stoutly submitted that the situation, borne out by the record, indicates that the Tahsildar was wholly justified in granting a right of way. The existence of the way in question was established in the spot inspection by the Circle Inspector. The non-availability of the alternate way throughout the year, as it falls within the river bed, is also indisputable. Moreover, the construction of Kolhapuri Bandhara over the path of the said river further fortifies the claim of respondent No. 6 that the alternate way over the village boundary of Yenegur is not perennially available. In the circumstances, the Minister exercised the revisional jurisdiction to correct the apparent mistake into which lower authorities had fallen. Thus, no interference is warranted in the impugned judgment and order, submitted Mr. Katneshwarkar.

18. I have given anxious consideration to the rival submissions. The situation at the site is borne out by the map prepared by the Tahsildar, with the assistance of the officers of the Land Records Department. The broad situation which thus emerges is that the land of the petitioner (Gut No. 248) abuts Yenegur – Jevali road. The land of respondent No. 6 (Gut No.242) is on the eastern side of Gut No. 248. There is a way admeasuring 350 ft. on the boundaries of Gut No. 248 (of the petitioner) and Gut No. 240, which leads to the field of respondent No. 6 (Gut No. 242). River flows from the eastern side of Gut No. 242 and the adjoining lands bearing Gut Nos.244, 245 and 247. Patches of road are shown on the southern and northern part of the said river bed. Two Kolhapuri type weir (bund) are shown to have been constructed on the river bed.

19. In the light of the aforesaid facts, the question that crops up for consideration is, whether the Tahsildar was justified in granting the right of way by order dated 25th November 2010. A strong criticism was advanced on behalf of the petitioner against the spot inspection report carried out by the Circle Inspector. Emphasis was laid on the fact that in the said report it was recorded that an alternate way, though available for

respondent No. 6, cannot be said to be useful as it entailed expenses to make it functional. Undoubtedly, the Circle Inspector placed two options for the consideration of the Tahsildar. However, it does not imply that the existence of the way over the boundaries of Gut Nos. 248 and 240 was not borne out by the said report. In view of the map prepared by the Tahsildar, pursuant to the orders of this Court, at this juncture, it would be too late in the day to urge that the way over the boundaries of Gut Nos. 248 and 240 does not exist. It is incontestible that the petitioner uses the very same way to access his land.

20. The affidavit of Mr. Rahul Patil, the then Tahsildar, that the said way was not a customary path and was never available for respondent No. 6 prior to the litigation, does not advance the cause of the petitioner. This assertion is, at best, an inference drawn by Mr. Patil. Conversely, the map annexed to the affidavit unequivocally indicates that the alternate way runs through the river bed over which bunds are constructed. The fact that the old customary way could be again made functional, even if taken at par, cannot be pressed into service to controvert the fact that the said way passes through the river bed.

21. It would be contextually relevant to note that after

the matter was heard extensively, on 3rd March 2021 the petitioner placed on record a copy of the order passed by Tahsildar on 3rd March 2021 whereby the application of respondent No. 6 herein to remove obstruction over the boundaries of the lands bearing Gut Nos. 240, 241 and 248 came to be rejected. From the perusal of the said order, it becomes evident that it was passed on the basis of the assertion in the affidavit filed by Mr. Rahul Patil, the then Tahsildar, Lohara. It is pertinent to note that the incumbent Tahsildar has recorded in clear and explicit terms that no alternate way is available to the holder of Gut No. 242 (respondent No. 6). However, in view of the affidavit sworn by the then Tahsildar, the application of respondent No. 6 came to be rejected. This order does more harm than good to the cause of the petitioner as it records in black and white that no alternate way is available to respondent No. 6.

22. In the light of aforesaid scenario, two questions crop up for consideration. First, the justifiability of exercise of revisional jurisdiction by the Minister (Revenue). Second, the extent to which this Court can interfere with the impugned orders in exercise of writ jurisdiction.

23. From the perusal of the order passed by the second appellate authority in Appeal No. 59/165, it becomes evident that the non-availability of the said alternate way was not at all adverted to by the second appellate authority. The availability of the said way throughout the year significantly bears upon the claim of respondent No. 6. The first revisional authority also did not consider the said aspect. In the circumstances, as the authorities did not take into account relevant material, the second revisional authority was justified in exercising the revisional jurisdiction.

24. The question which now wrenches to the fore is, whether in exercise of the writ jurisdiction, this Court would be justified in interfering with the finding of fact, even if it is assumed that the finding of fact is erroneous. The writ jurisdiction is undoubtedly of wide amplitude. However, it cannot be construed to be so wide or large as to enable the High Court to convert itself into a Court of appeal and examine for itself the correctness of the decision impugned before it and decide as to what is proper view to be taken, in a given case, as if the entire matter is open for adjudication in exercise of appellate jurisdiction.

25. A useful reference in this context, can be made to a Constitution Bench judgment of the Supreme Court in the case of *Syed Yakoob Vs. K.S. Radhakrishnan and others (AIR 1964 SC 477)*, wherein the limits of writ jurisdiction were illuminatingly postulated, as under :

"A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals; these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or in excess of it, or as a result of failure to exercise jurisdictions. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and

material evidence adduced before the Tribunal was' insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ court. It is within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised".

(emphasis supplied)

26. In the backdrop of the aforesaid enunciation of the legal position, reverting to the facts of the case, it could not be shown that the impugned order suffers from jurisdictional error or has been passed in breach of fundamental principles of natural justice. Nor could it be shown that the revisional authority has taken into account inadmissible material or brushed aside relevant material. The challenge is essentially rooted in an erroneous view on facts. Consistent with the settled legal position, this Court would not be justified in delving into the correctness of the finding of fact. Therefore, in my considered view, no interference is warranted in the impugned judgment and order in exercise of the writ jurisdiction.

27. The conspectus of the aforesaid consideration and forgoing reasons is that the petition deserves to be dismissed. Hence, the following order.

ORDER

- (i) The petition stands dismissed.
- (ii) Interim order, if any, stands vacated.
- (iii) In view of dismissal of the petition, Civil Application No.1087 of 2021 for intervention does not survive and accordingly stands dismissed.
- (iv) No costs.
- (v) Rule discharged.

(N.J. JAMADAR, J.)

VD_Dhirde