

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

WRIT PETITION NO.7712 OF 2015

Ashok s/o Panditrao Bhosle,
age: 55 years, Occ: Agril.,
R/o Maherjawala, Tq.Ghansawangi,
District Jalna.

Petitioner

Versus

01 The State of Maharashtra,
through the Chief Secretary,
Revenue Department,
Mantralaya, Mumbai.

02 The District Collector, Jalna,
District Jalna.

03 The Upper District Collector,
Jalna.

04 The Tahsildar, Ghansavangi,
Tq.Ghansavangi,
District Jalna.

05 The Talathi, Talathi Sajja,
Borgaon (Kh.),
Tq.Ghansavangi,
District Jalna.

06 Bharat s/o Ranganath Bhosle,
age: 55 years, Occ: Agri.,
R/o Maherjawala, Tq. Ghansavangi,
District Jalna.

07 Sunderrao s/o Panditrao Bhosle,
age: 65 years, Occ: Agri.,
R/o Maherjawala, Tq. Ghansavangi,
District Jalna.

Respondents

Mr.V.M.Humbe, advocate for the Petitioner.
Mr.S.B.Pulkundwar, AGP for Respondents No.1 to 5.
Mr.B.A.Darak, advocate for Respondent No.6.
Respondent No.7 is a formal party.

CORAM : V.K.JADHAV, J.

DATE : 09th February, 2021.

ORAL JUDGMENT:

1 Heard. Rule. Rule made returnable forthwith and heard finally by consent of learned Counsel for respective parties.

2 The learned Counsel for the petitioner submits that Respondent No.6 has filed an application before the Tahsildar, Ghansavangi, purportedly under Section 5 of the Mamlatdars' Courts Act, 1906, for removal of the impediment on the existing way leading to his land G.No.144 from land G.Nos.135 and 136 owned by the present petitioner. The learned Counsel submits that the Tahsildar neither given an opportunity of being heard to the petitioner nor inspected the spot and drawn *panchanama* in the presence of the petitioner. Though the petitioner has raised this specific ground in his appeal before the Sub Divisional Officer, however, the Sub Divisional Officer has also not considered the same and confirmed the order passed by the Tahsildar.

3 The learned Counsel for Respondent No.6 – original plaintiff submits that the petitioner himself has approached the Collector after the decision rendered by the Sub Divisional Officer in appeal. The petitioner has preferred said appeal under Section 247 of the Maharashtra Land Revenue Code before the Additional Collector, Jalna. The learned Counsel submits that the petitioner himself has treated the said proceedings as proceedings initiated under Section 143 of the Maharashtra Land Revenue Code and in view of the same, an alternate efficacious remedy of filing Revision is available to the petitioner. The learned Counsel for Respondent No.6 submits that after drawing *panchanama* in the presence of the *pancha* witnesses, the Tahsildar has rightly considered the case and passed the order. There is no reason to interfere with the same.

4 I have also heard the learned AGP appearing for Respondents No.1 to 5 for some time.

5 It appears that on 11th June, 2012, Respondent No.6 has filed an application before the Tahsildar, Ghansavangi, for removal of the impediment on the existing way created by the petitioner and Respondent No.7-Sunderrao. In view of the same,

it has to be treated as an application under Section 5 of the Mamlatdars' Courts Act and in any manner, same cannot be treated to be an application seeking right of way in terms of provisions of Section 143 of the Maharashtra Land Revenue Code, 1966. Even Respondent No.6 has admitted the same while raising objection about maintainability of the appeal preferred by the petitioner before the Additional Collector.

6 It further appears from the order passed by the Tahsildar, that no opportunity of being heard was given to the petitioner nor the spot was inspected and *panchama* was drawn in the presence of the petitioner herein. In view of the same, the petitioner has repeatedly raised this ground, however, the Sub Divisional Officer has not considered the same. In view of the same, this Court is left with no other choice but to remand the application to the Tahsildar for considering the application afresh.

7 Hence, the following order:

(i) Writ Petition is hereby partly allowed.

(ii) The impugned orders are hereby quashed and set aside.

(iii) The matter is remanded to the Tahsildar, Ghansavangi to consider the application of Respondent No.6 dated 11th June, 2012, afresh by giving an opportunity of being heard to the petitioner herein and also visit the spot and draw *panchanama* in the presence of both the parties.

(iv) The petitioner shall appear before the Tahsildar, Ghansavangi, on 23rd February, 2021.

(v) Respondent No.6 shall also make his appearance before the Tahsildar, Ghansavangi, on the aforesaid date i.e. 23rd February, 2021.

(vi) The Tahsildar, Ghansavangi, District Jalna, is hereby directed to dispose of the case as expeditiously as possible, preferably within a period of six months from the date of this order.

(vii) Rule is partly made absolute in above terms with no order as to costs.

(V.K.JADHAV)
JUDGE