

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

WRIT PETITION NO.7145 OF 2016

Indubai w/o Haribhau Ghule,
Age : 61 years, Occ: Agri.,
R/o. Atharewasti, Rupewadi,
Tq. Pathardi, Dist. Ahmednagar.

... **PETITIONER**

VERSUS

1. The States of Maharashtra
through its District Collector,
Ahmednagar.
2. The Sub Divisional Officer,
Pathardi Division, Pathardi,
Dist. Ahmednagar.
3. The Tahsildar,
Pathardi, Tq. Pathardi,
Dist. Ahmednagar.
4. Sarjerao s/o. Gangadhar Solat,
Age : Major, Occu: Agri.,
5. Balasaheb s/o. Muktaji Athare
Age : Major, Occu: Agri.,
6. Shivaji s/o. Kanifnath Athare,
Age : Major, Occ: Agri.,
7. Vijaya Nilkanth Mali,
Age : Major, Occu: Agri.,
8. Balasaheb s/o. Bhausahab Chobhare
Age : Major, Occu: Agri.,
9. Baban s/o. Bhausahab Chobhare,
Age : Major, Occu: Agri.,
10. Bahirnath s/o. Nivrutti Kapase,
Age : Major, Occu: Agri.,
11. Jalindar s/o. Haribhau Kapase,
Age : Major, Occu: Agri.,
12. Changdeo s/o. Natha Bhalke,
Age : Major, Occu: Agri.,

Resp. Nos. 4 to 12 are R/o. Rupewadi,
Tq. Pathardi, Dist. Ahmednagar

... **RESPONDENTS**
(Resp. Nos. 4 to 12
Org. Plaintiffs)

...

Advocate for Petitioners : Mr. Ajay T. Kanawade

AGP for the respondent Nos.1 to 3 : Mr. P.N. Kutti

Advocate for Respondent Nos. 4 to 12 : Mr. Narayan B. Narwade

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**WITH
WRIT PETITION NO.10763 OF 2015**

1. Kanifnath S/o. Gangadhar Sawashe,
Age : Major, Occu: Agri.,
R/o. Rupewadi, Tq. Pathardi,
Dist. Ahmednagar.
2. Karbhari S/o. Gangadhar Sawashe
Age : Major, Occ: Agri
R/o. Rupewadi, Tq. Pathardi,
Dist. Ahmednagar.
3. Laxman S/o. Nana Ghule
Age : Major, Occ: Agri
R/o. Rupewadi, Tq. Pathardi,
Dist. Ahmednagar.
4. Haribhau S/o Khandu Ghule
Age : Major, Occ: Agri
R/o. Rupewadi, Tq. Pathardi,
Dist. Ahmednagar.

... **PETITIONERS**
(Org. Defendants)

VERSUS

1. The States of Maharashtra
through its District Collector,
Ahmednagar.
2. The Sub Divisional Officer,
Pathardi Division, Pathardi,
Dist. Ahmednagar.
3. The Tahsildar,
Pathardi, Tq. Pathardi,
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4. Sarjerao s/o. Gangadhar Solat,
Age : Major, Occu: Agri,
5. Balasaheb s/o. Muktaji Athare
Age : Major, Occu: Agri.,
6. Shivaji s/o. Kanifnath Athare,
Age : Major, Occ: Agri.,
7. Vijaya Nilkanth Mali,
Age : Major, Occu: Agri.,

8. Balasaheb s/o. Bhausahab Chobhare
Age : Major, Occu: Agri.,
9. Baban s/o. Bhausahab Chobhare,
Age : Major, Occu: Agri.,
10. Bahirnath s/o. Nivrutti Kapase,
Age : Major, Occu: Agri.,
11. Jalindar s/o. Haribhau Kapase,
Age : Major, Occu: Agri.,
12. Changdeo s/o. Natha Bhalke,
Age : Major, Occu: Agri.,

Resp. Nos. 4 to 12 are R/o. Rupewadi,
Tq. Pathardi, Dist. Ahmednagar

... RESPONDENTS
(Org. Plaintiffs)

...
Advocate for Petitioners : Mr. Arvind G. Ambetkar
AGP for the respondent Nos. 1 to 3 : Mr. P.N. Kutti
Advocate for Respondent Nos. 4 to 12 : Mr. Narayan B. Narwade

...
CORAM : MANGESH S. PATIL, J.

DATE : 02.09.2021

ORAL JUDGMENT :

Heard. Rule. The Rule is made returnable forthwith. With the consent of both the sides, the matter is heard finally at the stage of admission.

2. The petitioners are impugning the judgment and order passed by the learned Mamlatdar in a suit initiated by the contesting respondents under Section 5(2) of the Mamlatdars' Courts Act, 1906 (herein after the Act) and the judgment and order passed by the learned SDO whereby he dismissed the Revision preferred by the petitioners under Section 23(2) of the Act.

3. The facts leading to the filing of this Writ Petition are to the effect that

initially some villagers and members of the Grampanchayat filed a proceeding which was registered as Rasta Case No.71/2014 on 05.11.2014 asserting that the disputed way has been in existence but was being obstructed by the petitioners in W.P. No.10763/2015. A Panchanama was conducted on 20.11.2014 mentioning that there were no signs of existence of any way at the disputed site. It appears that another Panchanama was conducted again around the same time showing that the way was in existence and was obstructed by dumping some thorny bushes and some portion was destroyed by ploughing it. It appears that later on the contesting respondents filed another Rasta Case which was registered as Rasta Case No.1/2015 on 05.02.2015. Pertinently they raised the similar objections about the petitioners in W.P. No.10763/2015 having obstructed the way. These petitioners appeared in the matter and contested the proceeding by filing their written statement. Subsequently one more Panchanama was conducted. By the impugned order the Mamlatdar allowed the second Rasta Case No.1/2015.

4. In the meantime, the first Rasta Case No.71/2014 was sought to, and the self same Mamlatdar allowed it to be withdrawn. The order of Mamlatdar was challenged before the SDO who by the impugned order dismissed the Revision of the petitioners in W.P. No.10763/2015.

5. The learned advocate Mr. Ambedkar for the petitioners in Writ Petition No.10763/2015 submits that both the authorities have given a complete go by to the procedure required to be followed while conducting a

proceeding under Section 5(2) of the Act. He would submit that it is required to be treated and decided as a suit and all the powers of Civil Court are conferred upon the Mamlatdar by statutory provisions. Besides, there is a limitation of six months to file a proceeding from the date of obstruction but the plaint filed in Rasta Case No.1/2015 conspicuously omits to disclose the date of such obstruction. Since it was in the form of a continuation of the earlier Rasta Case No.71/2014, there is every room to believe that the cause of action was intentionally omitted to be stated while filing the Suit in the matter on 05.02.2015.

6. The learned advocate Mr. Ambekar would further submit that there is absolutely no whisper in the impugned orders about the earlier Panchanamas, about their correctness or otherwise, particularly when the first Panchanama never revealed existence of any signs of the disputed way.

7. The learned advocate would further submit that ignoring all the aforementioned facts and circumstances and without there being absolutely any material to reveal and identify existence of the disputed way, the authorities below, as if they were granting a new road to obviate any inconvenience being caused to the respondents have granted a new way. He would submit that there is distinction between the power to be exercised by a Mamlatdar/Tahsildar under Section 5 of the Act and under Section 143 of the Maharashtra Land Revenue Code. He would therefore submit that both the authorities below have grossly erred in allowing/approving the case of the respondents regarding existence of the way and its obstructions.

8. The learned advocate Mr. Kanawade for the petitioner in Writ Petition No.7145/2016 would submit that the petitioner therein is the owner of land Gat No.364 and is in all probability likely to be affected if the way in dispute is allowed to be used as is being claimed by the respondents. In spite of such state of affairs she was not arrayed as a defendant in the Rasta Case and that has deprived her of putting forth her own grievance. She is being affected by the impugned judgments and orders and that is why she is impugning it by way of the separate Writ Petition.

9. The learned AGP subscribes to both the orders.

10. The learned advocate Mr. Narwade for the contesting respondents would submit that the whole purpose of providing for the powers to the Mamlatdar under Section 5(2) of the Act is to see to it that the agriculturist are not affected by the obstruction created to the customary ways without which lands cannot be cultivated. He would further submit that the very fact that the petitioners are objecting to the respondents' claim reveals that they are bent upon to create. There is no alternate way for the use of the respondents. All these facts have been taken into consideration. The portion where from the way is being claimed is a boundary of two villages where from disputed way originates. He would also submit that there are specific rules framed under the Maharashtra Land Revenue Code and Government Circulars regulating the manner in which the boundary marks and boundaries are to be maintained by the Revenue Authorities. Even otherwise, therefore, this Court should take cognizance that the

dispute is arising out of such maintenance of the boundaries which should always be kept open for the use by the farmers. He would therefore submit that a similar view taken by this Court in the Case of **Bapu Khelu Sapte Vs. The State of Maharashtra and Ors. ; (W.P. No. 7023/2016)** decided on 17.02.2020 should be followed. Though the authorities have not come out with all the reasoning which was available for them, this Court should look into the matter from the over all perspective and by taking into account the nature of the dispute dismiss the Writ Petitions.

11. I have carefully considered the rival submissions and the papers. Needless to state that the legislature in its wisdom having conferred power on a Mamlatdar under Section 5 of the Act to decide a dispute pertaining to obstructions created in the customary ways, it was expected of the Mamlatdar to have conducted the proceeding strictly in accordance with the mandate of the law.

12. Though the initial representation by the villagers and the members of the Grampanchayat dated 05.11.2014 was not in the nature of a plaint, still it was registered as Rasta Case No.71/2014. Couple of panchanamas were conducted soon thereafter in the first of which dated 20.11.2014, it was specifically noted that there were no signs of existence of any way at the disputed site. Soon thereafter or may be on the same day another Panchanama is conducted by the self same Mamlatdar. There is a clear overwriting in the date under his signature. One cannot, therefore, make out as to if it was conducted on the very same day on which the first

Panchanama was conducted or on some other day. Some of the respondents herein were also present at this second panchanama and it is in this second Panchanama that it has been mentioned that some signs of existence of a way were noticed and there was some obstruction created over it. Both the authorities are absolutely silent in their impugned orders as to in what manner they had taken cognizance of these two panchanamas and particularly the inherent inconsistency.

13. It appears that a third Panchanama was conducted on 10.07.2015. Pertinently, it demonstrates not only the District Road but it also demonstrates existence of some way originating from the District Road. The portion where from the respondents are claiming a way is shown specifically as a portion where from the respondents indeed are claiming a way. It does not conspicuously mention that such a way was in existence at the time of Panchanama and that there was some obstruction created over it. On the contrary it has been mentioned that few trees were found to be in existence on that site which were aged more than 5 to 10 years. Although the Panchanama also reads that there is no alternate way for the respondents to use, that cannot be a reason or ground to be considered while deciding a proceeding under Section 5(2) of the Act.

14. Further, it is to be borne in mind that Section 5(2) lays down a limitation for filing a suit which has to be filed within six months of creation of the obstruction. The plaint filed by the respondents clearly omits to state the exact date or even any date by way of approximation as to when the

obstruction was created, even if it is assumed that it was so created. If that be so, the lower authorities ought to have considered this aspect as well. They are not supposed to step in and exercise the Jurisdiction unless the Suit was filed within the period of limitation prescribed. Needless to state that the question of limitation goes to the root of the Jurisdiction.

15. Besides, as is mentioned earlier, this Rasta Case No.1/2015 was initiated by way of a correction and continuation of the earlier Rasta Case No.71/2014. That is why the respondents had passed a pursis and got the earlier Rasta Case withdrawn while lodging the present Rasta Case. It is in these peculiar state of affairs, it was important for them to have disclosed as to when for the first time the obstruction was created in the use of the disputed way. They having conspicuously omitted to do that one cannot readily infer that the obstruction was created within six months before filing of the Suit. Since both the authorities have omitted to consider even this factual aspect, they have grossly erred in entertaining the Suit and granting/confirming the relief.

16. So far as the Writ Petition No.7145/2016, no dispute is raised by the contesting respondents about her assertion of being owner of the land Gat No.364 and that the disputed way affects her land as well. If that be so, it was indeed imperative for the contesting respondents to have arrayed her as a defendant in the Suit. That being the case certainly she was a necessary party to the Suit and the judgments and orders of the lower authorities would not bind her.

17. In view of such state of affairs, the Writ Petitions deserve to be allowed.

18. The Writ Petitions are allowed. The impugned judgments and orders are quashed and set aside. The Rule is confirmed in both the Writ Petitions.

(MANGESH S. PATIL, J.)

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