

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7376 OF 2020

1. Kumar S/o Baburao Ghongane
Age 50 years, Occ. Agri.,
2. Nilkanth S/o Gangadhar Bharat
Age 75 years, Occ. Agil,
3. Devidas S/o Gangadhar Bharat
Age 62 years, Occ. Agri.,
4. Janabai w/o Kumar Ghongane
Age 45 years, Occ. Agril,
5. Pandurang S/o Eknath Aakolkar
Age 65 years, Occ. Agril,
6. Jijabai w/o Pandurang Ghongane
Age 60 years, Occ. Agril,

All R/o Hatgaon, Tq Shevgaon
Dist. Ahmednagar.

Petitioners

Versus

1. Dagadu S/o Dadabhai Shaikh
Age 61 years, Occ. Agril,
2. Jamil S/o Dagadu Shaikh
Age 38 years, Occ. Agril,
3. Riyaj S/o Dagadu Shaikh
Age 33 yers, Occ. Agril
4. The Ld. Sub Divisional Officer
Pathardi, Division Pathardi
Tq. Shevgaon, Dist. Ahmednagar

5. The Collector, Ahemdnagar
6. The State of Maharashtra
Through the Principal Secretary
Revenue and Forest Department
Mantralaya, Mumbai. Respondents

Mr. K.C.Sant, Advocate for the petitioner.

Mr. A.A. Jagatkar, AGP for respondents No. 4 to 6.

Mr. S.S. Jadhavar, Advocate holding for Mr. S.R. Andhale, Advocate for respondents No. 1 to 3.

CORAM : M.G. SEWLIKAR, J.

DATE : 17th August, 2021.

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith.
2. By consent of learned counsel for both the parties, heard finally at the stage of admission.
3. Challenge in this petition is to the order passed by the learned Sub-Divisional Officer, Pathardi Division, Pathardi in Revision No. 107/2019 whereby the learned Sub-Divisional Officer has set aside the order dated 28th March, 2019, passed by the learned Tahsildar in Rasta Case No. 44/2017.

4. Facts in brief are that there is a cart way on the common bund between Gat No. 753 and 729 in East-West direction. This road was blocked by respondents No. 1 to 3 from southern side of land Gat No. 734. Respondents No. 1 to 3 ploughed the said portion and took crop of pulses. Therefore, petitioners filed Rasta Case No. 44/2017 before the Tahsildar for removal of obstruction.

5. Respondents filed written statement denying all the contentions.

6. Learned Tahsildar, by order dated 14th June, 2018, allowed the application and directed respondents to remove obstruction. He further directed that the road should be wide enough to accommodate a bullock cart and other agricultural vehicles. This order was challenged by respondents before the learned Sub-Divisional Officer, Pathardi, by preferring Revision No. 8/2018. The learned Sub-Divisional Officer allowed the revision partly and directed the Tahsildar to inspect the spot and draw panchanama and then pass the order. Accordingly, learned Tahsildar drew panchanama on 26th February, 2019. While drawing panchanam, he prepared a sketch map showing location of the road and the lands of

the parties. Thereafter, learned Tahsildar, by order dated 28th March, 2019, allowed the application of the petitioners and passed the same order which he had passed earlier and, directed respondents to remove obstruction. This order was challenged before the learned Sub-Divisional Officer in Revision No. 107/2019. The learned Sub-Divisional Officer allowed the revision and dismissed the application of the petitioners and held that because of cultivation, road was not visible. He further observed that in land Block No. 735 and 736, there was cultivation of cotton and sugarcane. There were trees of Lemon, Babhul and Jujube on the common bund. He also observed that no road was noticed on the common bund of lands survey No. 734, 735 and 736. This order is impugned in this petition.

7. After remand, the learned Tahsildar drew panchanama. Sketch map shows that the road is in East-West direction. To the South side of the road is the land of petitioner bearing Gat No. 749 and 750. There is land bearing Block No. 751 and 752 adjoining to the land of the petitioners. To the northern side of this road, there are lands of respondents bearing Block No. 734, 735 and 736. Block No. 733 is adjoining to block No. 734 from eastern side. Thus, position that emerges is that there is a road in East-West direction

between lands Survey No. 749, 750, 751, 752 and lands Survey No. 733, 734, 735 and 736. This road further leads to Hatgaon-Mungi main road. Sketch map further shows that there is a well and the road is blocked between Survey No. 751 and 734.

8. Shri Jadhavar, learned counsel for respondents No. 1 to 3 argued that when there are trees on this road and the road is blocked by a well, it is not possible for any one to have access by this road. He submitted that photographs were tendered before the learned Sub-Divisional Officer and these photographs clearly depict the position that these trees are on the road itself. For this very reason, the learned Sub-Divisional Officer allowed the revision and dismissed the case of the petitioners.

9. Learned counsel Shri Sant submitted that even if there is a well, it is not wide enough to cover the entire road. Petitioners are accessing this road since their forefathers. The ancestors of respondents sold the lands to the petitioners in the year 1986. In the sale-deed, there is a mention of cart way. This cart way is the same which is shown in the sketch map drawn by the Tahsildar. He submitted that the learned Sub-Divisional Officer observed that this

land was not purchased by the petitioners. Therefore, petitioners cannot lay any claim by virtue of sale-deed. He submitted that these observations are contrary to the legal position.

10. From the pleadings and arguments of both the parties, it is obvious that both the parties admitted the sketch map drawn by the Tahsildar. This sketch map shows that the road is in East-West direction and it meets Hatgaon-Mungi road on the eastern side. If this map is carefully perused, it does not show that petitioners or for that matter respondents, have any other road to access to their respective lands. A pointed query was made to learned counsel Shri Jadhavar as to how respondents are accessing Hatgaon-Mungi road when the road is blocked by a well and because of cultivation made by respondents the road is shown to be destroyed. He submitted that there is nothing on record to show that respondent is accessing through any other way. But on instructions he submits that respondent is accessing through land Gat No. 733. Since these submissions are off the record, they cannot be considered.

11. The photographs which were produced by respondents before the Sub-Divisional Officer were also produced for inspection

before this Court. From these photographs, it cannot be said that the location of trees cause any impediment to the access by this road. In this view of the matter, more particularly, when there is a clear mention in the sale-deed about existence of way and the executant of this sale-deed is none else than the ancestors of the respondents, it cannot be said that there was no road in existence.

12. In this view of the matter, the learned Sub-Divisional Officer has committed error in allowing the revision and dismissing the Rasta Case. Petition is, therefore, allowed. Judgment and order dated 27th July, 2020, passed by the learned Sub-Divisional Officer, Pathardi, is set aside and the judgment and order dated 28th March, 2019, passed by the learned Tahsildar, Shevgaon, is restored. Writ petition is allowed with no order as to costs. Rule made absolute in above terms.

(M. G. SEWLIKAR)
Judge

dyb