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

**WRIT PETITION NO. 10968 OF 2018**

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|-----|----------------------------------------------------------------|-------------|
| 1.  | Raosaheb s/o Gangadhar Chavan<br>Age – 68 years, Occ – Agril   | PETITIONERS |
| 2.  | Ashok s/o Bhausaheb Chavan<br>Age – 44 years, Occ – Agril      |             |
| 3.  | Deelip s/o Bhausaheb Chavan<br>Age – 46 years, Occ – Agril     |             |
| 4.  | Kiran s/o Bhausaheb Chavan<br>Age – 42 years, Occ – Agril      |             |
| 5.  | Alka w/o Pralhad Chavan<br>Age – 40 years, Occ – Agril         |             |
| 6.  | Mandakini w/o Bhausaheb Chavan<br>Age – 72 years, Occ – Agril  |             |
| 7.  | Tarabai w/o Gorakshnath Chavan<br>Age – 57 years, Occ – Agril  |             |
| 8.  | Jagannath s/o Sukhdeo Autade<br>Age – 58 years, Occ – Agril    |             |
| 9.  | Mukund s/o Bapusaheb Chavan<br>Age – 47 years, Occ – Agril     |             |
| 10. | Shridhar s/o Bapusaheb Chavan<br>Age – 72 years, Occ – Agril   |             |
| 11. | Pramila w/o Vasantryao Kotkar<br>Age – 52 years, Occ – Agril   |             |
| 12. | Sangita w/o Jagannath Autade<br>Age – 47 years, Occ – Agril    |             |
| 13. | Prayagabai w/o Bapusaheb Chavan<br>Age – 75 years, Occ – Agril |             |

All R/o Devlali Pravara  
Taluka – Rahuri, District – Ahmednagar

VERSUS

- |    |                                                                |             |
|----|----------------------------------------------------------------|-------------|
| 1. | Bhimraj s/o Keshav Musmade<br>Age – 49 years, Occ – Agril      | RESPONDENTS |
| 2. | Sangita w/o Bhimrao Musmade<br>Age – 42 years, Occ – Agril     |             |
| 3. | Dattatraya s/o Jagannath Chavan<br>Age – 32 years, Occ – Agril |             |
| 4. | Gayabai w/o Jagannath Chavan<br>Age – 62 years, Occ – Agril    |             |

All R/o Devlali Pravara  
Taluka – Rahuri, District – Ahmednagar

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| 5. | The Tahsildar<br>Rahuri, Taluka – Rahuri<br>District – Ahmednagar |
| 6. | The Sub Divisional Officer,<br>Shrirampur Division, Shrirampur    |

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Mr. R. R. Karpe, Advocate for the petitioners  
Mr. S. C. Arora, Advocate for respondents No.1 and 2  
Mr. A. A. Jagatkar, AGP for respondents No. 5 and 6 - State  
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**[CORAM : NITIN B. SURYAWANSHI, J.]**

**DATE : 4<sup>th</sup> DECEMBER, 2021**

**JUDGMENT :**

1. 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<sup>th</sup>

October, 2016 passed by respondent No. 5 - Tahsildar, Rahuri in Rasta Case No. 22 of 2013, confirmed by order dated 12<sup>th</sup> April, 2018 passed by respondent No.6 - Sub Divisional Officer, Shrirampur in Revision Application No.1 of 2017, whereby respondents No. 1 and 2 are given right of way as prayed by them.

3. Respondents No.1 and 2 filed Rasta case No. 22 of 2013 before the Tahsildar, Rahuri claiming that they are owners of lands bearing Gut Nos. 1513/1/1, 1513/1/1/2 and 1513/2/1 and abutting to their lands, on the eastern side, there are lands of petitioners No. 1 and 2 bearing Gut No. 1513/1/2 and 1513/2/2 and the land of petitioners No. 3 to 15 bearing gut No. 1512 is abutting to their lands on southern side. The respondents were using east-west road on the southern side of their lands, which was being used as a customary road. On the eastern side of the lands of the petitioners, there is south-north Pravara to Ambi Road. The respondents claimed that the petitioners tried to obstruct the usage of the customary road and, therefore, they filed said proceedings.

4. A spot inspection Panchanama was conducted in the said proceedings on 4<sup>th</sup> July, 2013. The Tahsildar, by the order dated 15<sup>th</sup> October, 2016, partly allowed the application of the

respondents No.1 and 2 and directed to remove obstructions and to clear the 7 to 8 feet south-north road from the eastern boundary of lands of petitioners No. 1 and 2, to enable the respondents to approach to their lands.

5. The petitioners, unsuccessfully challenged said order of the Tahsildar, by filing Revision Application No. 1 of 2017 before respondent No. 6 – the Sub Divisional Officer, Shrirampur. Both the orders passed by the Tahsildar as well as by the Sub Divisional Officer are impugned in the present writ petition.

6. Heard learned advocate for the petitioners, learned advocate for respondents No.1 and 2 and learned Assistant Government Pleader for respondents No. 5 and 6. Perused the original record made available by the learned Assistant Government Pleader.

7. Learned advocate for the petitioners submitted that there were no relevant pleadings in the application filed by the respondents No. 1 and 2, to show that any specific obstruction was created by the petitioners. There was no averment that the petitioners destroyed any road. The procedure prescribed under sections 7 to 12 of the Mamlatdar's Courts Act, 1906 (for short "the said Act") was not followed and for violation of said

provisions, the impugned order passed by the Tahsildar is vitiated. According to him, the Panchanama is different than the pleadings made by the respondents in the application filed before the Tahsildar. He assailed the impugned order on the ground that there is no discussion on merits and no proper reasoning is given while allowing the application filed by the respondents. He, therefore, submitted that the impugned order is liable to be quashed and set aside, by allowing the writ petition.

8. Per contra, learned advocate for respondents No. 1 and 2 submitted that it is not in dispute that the petitioners and the respondents are adjoining land owners. The petitioners have failed to point out that there is any alternate road available to the respondents, other than the one which is granted by the Mamlatdar. He further submitted that, in fact, no prejudice is caused to the petitioners by the order passed by the Mamlatdar. According to him, it has come on record that the petitioners have destroyed the road, which fortifies the contention of the respondents that there was an old road in existence. By relying on section 8 of the said Act, he states that for the lapses on the part of the Tahsildar in following the prescribed procedure, the respondents should not be made to suffer. He submitted that

concurrent findings of facts are recorded by both the revenue authorities, which may not be interfered with in the extraordinary writ jurisdiction of this court.

9. Learned Assistant Government Pleader supported the impugned orders by pointing out the relevant documents from the original record.

10. Record reveals that, the application filed by respondents No.1 and 2, is verified at the bottom. Pursuant to the application, notices for spot inspection were issued to the concerned parties and those were duly served on them. The concerned parties were informed about the spot Panchanama to be conducted on 4<sup>th</sup> July, 2013. Signatures of the respective parties and others on whom said notices were served, are on the reverse side of the notice. Though the Panchanama was conducted on 4<sup>th</sup> July, 2013 in the presence of Panchas, the Panchas have refused to sign the Panchanama and endorsement to that effect is made on the said Panchanama by the Tahsildar. The respondents filed their statement / affidavit of evidence in support of their application. So also affidavit of respondent No. 2 is placed on record. There is also affidavit of one Anil Jagannath Pathare, a tractor driver, who was engaged by respondents No. 1 and 2 to plough their land, stating that the petitioners obstructed

and did not permit him to use the way to approach the respondents' field. A rough sketch of the spot is also on record, so also the village map. Photographs of the spot are also on record.

11. Taking into consideration the material placed on record, I am of the considered view that the Tahsildar – respondent No.5 was justified in allowing the application filed by the respondents. There is sufficient material on record to show that old customary road was in existence and it was being used by the respondents, the same was obstructed by the petitioners. In that view of the matter, the Tahsildar was right in allowing the application filed by respondents No. 1 and 2.

12. I do not agree with the submission of learned advocate for the petitioners that for violation of sections 7 to 12 of the said Act, application filed by respondents No. 1 and 2 ought to have been rejected. Section 8 of the said Act provides that informal petitions also should be treated as complaints. Section 8 of the said Act, reads, thus -

*“8. Where a petition not in the form of a complaint is presented to the Mamlatdar and the subject matter thereof appears to fall within the scope of section 5, the Mamlatdar shall explain to the person presenting the petition the nature of the reliefs afforded by this Act and shall inquire whether the Petitioner desires to obtain relief*

*thereby. If the Petitioner expresses a desire so to obtain relief, the Mamlatdar shall endorse the desire on the petition which shall thereupon be deemed to be a plaint presented under section 7.”*

13. Here, in the case in hand, there are specific averments in the application filed by respondents No. 1 and 2 about obstruction caused by the petitioners to their right of way. The affidavits in support of the application are already placed on record, as has been mentioned hereinabove. In that view of the matter, I am not inclined to accept said argument that for non compliance of sections 7 to 12 of the said Act, the proceedings ought to have been dismissed by the Tahsildar.

14. The Sub Divisional Officer has, by assigning proper reasons, rightly rejected the revision. There is no illegality or perversity in the orders impugned in the present writ petition. The petitioners are, therefore, not entitled for any relief. In the result, the writ petition is dismissed. Rule stands discharged. There shall be no order as to costs.

**[NITIN B. SURYAWANSHI]**  
**JUDGE**