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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.10643 OF 2012

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| 1. | Shahabai Uddhav Devare
Age – 35 years, Occ – Agri. | PETITIONERS |
| 2. | Khandu s/o Bhaurao Gaikwad
Age – 27 years, Occ – Agri | |
| 3. | Chandrabhaga Bhaurao Gaikwad
Age – 45 years, Occ – Agri. | |
| 4. | Anjanabai Pandurang Devare
Age – 40 years, Occ – Agri | |

All R/o Irachiwadi, Taluka-Bhoom,
District – Osmanabad

VERSUS

- | | | |
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| 1. | The State of Maharashtra
Through Collector, Osmanabad | RESPONDENTS |
| 2. | The Sub-Divisional Officer,
Bhoom, Tq. Bhoom, Dist. Osmanabad | |
| 3. | The Nayab Tahasildar,
Bhoom, Taluka Bhoom,
District Osmanabad | |
| 4. | Rambhau S/o Devrao Todkar
Age 70 years, Occu. Agri. | |
| 5. | Bapu S/o Sudam Todkar,
Age 50 years, Occu. Agri., | |
| 6. | Ramkrushna S/o Sudam Todkar
Age 35 years, Occu. Agri., | |
| 7. | Uddhav Pandurang Devare
Age 55 years, Occu. Agri., | |
| 8. | Bhaurao Savala Gaikwad
Age 56 years, Occu. Agri., | |

Respondents No.4 to 8

R/o. Irachiwadi, Taluka Bhoom
District Osmanabad

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Mr. M. R. Andhale, Advocate for the petitioners
Mrs. V. S. Chaudhari, AGP for respondent - State
Mr. Ramraje A. Deshmukh h/f Mr. S. R. Deshmukh, Advocate for
respondents No. 4 to 6

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[CORAM : NITIN B. SURYAWANSHI, J.]
DATE : 29th NOVEMBER, 2021

JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard finally with the consent of learned advocates for the appearing parties.

2. This petition challenges judgment and order dated 17th July, 2012 passed by the Nayab Tahsildar, Bhoom in File No. 2012/Jama/Kavi/415, thereby granting right of cart way to respondents No. 4 to 6, which is confirmed by the Sub Divisional Officer, Bhoom by order dated 25th October, 2012 passed in Revision in File No.2012/ROR/CR-99.

3. Respondents No. 4 to 6 had filed proceedings before the Tahsildar, Bhoom under section 5 of the Mamlatdars' Courts Act, 1906 (for short "the said Act"), praying for removal of obstructions created by the petitioners and for clearing the cart way. A site inspection was done and Panchanama was conducted and it was found that though the cart way claimed by the

respondents was not shown in the village map, however, the same was being used since long. Statements of the adjoining land owners were recorded to that effect during the site inspection. It was also found that the said cart way was closed by putting stones and other obstructions. The Nayab Tahsildar, after considering the rival contentions and the record as well as the site Panchanama, allowed the application filed by the respondents and directed the petitioners to remove obstruction and clear the cart way – Irachiwadi to Ghatnandur.

4. The petitioners, being aggrieved by the order passed by the Nayab Tahsildar, approached the Sub Divisional Officer, Bhoom, by filing revision, which came to be dismissed vide order dated 25th October, 2012. The orders, passed by the Nayab Tahsildar and confirmed by the Sub Divisional Officer, are impugned in the present petition.

5. Heard learned advocate for the petitioners, learned Assistant Government Pleader for respondents No. 1 to 3 and learned advocate for respondents No. 4 to 6.

6. It is not in dispute that the site inspection was conducted during which it was transpired that, though cart way claimed by the respondents was not shown in the village map, however, it

was being used since long. The inquiry conducted at the time of the site inspection confirmed this fact, as the adjoining land owners' statements to that effect have been recorded, who have confirmed that the cart way from Irachiwadi to Ghatnandur was being used since long and the same has been obstructed by the petitioners. The Nayab Tahsildar, after considering the record, statements recorded during the inquiry as well as the site inspection Panchanama, has rightly come to the conclusion that the petitioners have obstructed the cart way and has rightly directed the petitioners to remove the obstruction and clear the cart way to Irachiwadi to Ghatnandur.

7. The Sub Divisional Officer, in revision, has upheld the order passed by the Nayab Tahsildar, by giving cogent reasons and I find no justifiable reasons to interfere in the concurrent findings of fact recorded by the Nayab Tahsildar and the Sub Divisional Officer.

8. The petitioners filed Regular Civil Suit No. 122 of 2012 in the court of Joint Civil Judge, Senior Division, Bhoom seeking declaration and injunction against the respondents from using cart way. The civil court partly decreed the suit thereby declaring that the petitioners are owners of the suit property i.e. Block No. 5 admeasuring 3 Hectare, situated at Irachiwadi, Taluka-Bhoom,

however, has come to the conclusion that -

"The plaintiffs have proved that they are owners of the suit property and possessors of suit property excluding way existing therein. Defendants have proved that there is long standing way in the suit property."

9. Taking into consideration the reasons assigned by the Mamlatdar in the impugned order, which is rightly confirmed by the Sub Divisional Officer in the revision and the findings recorded by the Civil Court, no merit is found in the challenge raised by the petitioners in the present writ petition. No case is made out to exercise extraordinary writ jurisdiction. Writ petition, therefore, is dismissed. Rule stands discharged. No costs.

**[NITIN B. SURYAWANSHI]
JUDGE**