

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

908 WRIT PETITION NO.356 OF 2020

Rambhau Ambadas Dhanad & Ors.

... PETITIONERS

VERSUS

The State of Maharashtra & Ors.

... RESPONDENTS

...

Advocate for the Petitioners : Smt. Manjushri Shendage-Narwade

AGP for the Respondent Nos.1 to 4 – State: Mr. A. A. Jagatkar

Advocate for the Respondent No.5: Mr. V. C. Patil

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CORAM : N. B. SURYAWANSHI, J.

DATE : 23rd November, 2021

PER COURT :

1. This petition impugns the order passed by the learned Additional Collector, Aurangabad in Case No.2019/punarnirikshn/mamlatdar/CR-02(58) dated 25-09-2019 and judgment and order passed by the Tahsildar in sanchika ja.kra.2017/jama-1/kavi dated 20-11-2018, thereby allowing the application filed by the Respondents under Section 5 of the Mamlatdar's Courts Act, 1906 and granting him the right of way.

2. The Respondent No.5 herein owns Gut No. 274 situated at Kate Pimpalgaon, Taluka Gangapur and the Petitioners own Gut No.275. The Respondent No.5 filed proceedings under Section 5 of the Mamlatdar's Courts Act, 1906 (for short "the said Act") before the Tahsildar for claiming right of way which was in existence since last 100 years, which is blocked by the Petitioners on 29-07-2016. A spot panchnama was conducted. By order dated 02.02.2018, the Tahsildar allowed the application filed by the Respondent No.5 and directed to give him right of way from nandur madhmeshwar canal and from bandh/boundary 277, 275 and 274 to approach his Gut No.274. The said order was challenged by the Petitioners before the Additional Collector, Aurangabad by filing revision under Section 23 (2) of the said Act. The revision was partly allowed and order passed by the Tahsildar dated 02-02-2018 was set aside and the matter was remanded back for fresh consideration on merits.

3. After the remand, the Tahsildar, by order dated 20-11-2018, allowed the application filed by the Respondent No.5 and passed the order to grant him right of way as was ordered earlier. The Petitioners unsuccessfully challenged the order passed by the Tahsildar by filing revision before the Additional Collector, Aurangabad. Being aggrieved by the orders passed by the Tahsildar and Additional Collector, the present petition is filed.

4. Heard the learned advocate for the Petitioners, learned advocate for the Respondent No.5 and learned AGP for the Respondent Nos.1 to 4-State.

5. The learned advocate for the Petitioners submitted that no opportunity to lead evidence was given to the Petitioners and therefore, the impugned orders are liable to be quashed and set aside. Her second submission is that the application filed under Section 5 of the said act was not in proper format and therefore, the impugned orders are liable to be set aside on that ground. In support of her submissions, she placed reliance in the case of **Sudhir Yashwant Dhangade Vs. Ankuch Kashiram Bole & Ors.** reported in **2019 (1) All M.R. 825** and the order passed by the learned Single Judge in Civil Revision Application No.187 of 2009.

6. The learned advocate for the Petitioners and the learned AGP, on the other hand, supported the impugned orders.

7. Perusal of the record reveals that a spot panchnama was conducted, wherein the way claimed by the Petitioners was noticed. The Tahsildar, in the impugned order, has taken note of the fact that in the sale deed i.e. 5674/2007 executed by Bijlabai Ramrao Dhanad owner of the part of Gut No. 275, it is mentioned that for approaching the land purchased by the Respondent No.5 for taking the bullock cart in the land

of Respondent No.5 from southern, western, eastern bandh, one wheel of bullock cart can be permitted to be taken from her land. After considering the documents on record, the Tahsildar has rightly allowed the application filed by the Respondent No.5. The Additional Collector has rightly come to the conclusion that the orders passed by the Tahsildar are proper taking into consideration the record.

8. In the case of Sudhir Yashwant Dhangade Vs. Ankuch Kashiram Bole & Ors. (*Supra*), in the facts of that case, this Court has held that right of cross-examination ought to have been given to the Petitioners. In the case in hand, nothing is pointed out to show that the Petitioners sought permission to cross-examine the Respondents etc. and no statements recorded during the course of proceeding conducted by the Tahsildar under Section 5 of the said Act are placed on record. In absence of the said statements and in absence of the Petitioners, asking permission for cross-examination, there was no occasion to grant right of cross-examination to the Petitioners. From the impugned order, it can be gathered that the same is passed by the Tahsildar mainly on the basis of spot inspection and spot panchnama. This ruling therefore does not help the Petitioners.

9. In the Civil Revision Application No.187/2009, the learned Single Judge of this Court, in the facts of that case, has held that there is

no statement of the original applicant on oath or verification; the application does not give age, description and residence of the parties litigating. On that ground, this Court set aside the orders passed under Section 5 of the said Act.

10. In the present case, the age and residential address is mentioned in the application. In the facts of the present case, I am not inclined to accept the argument of the Petitioners that for absence of the verification, the application filed by the Respondent No.5 was not tenable and it ought to have been dismissed. The Mamlatdar has passed a well reasoned order on the basis of record, after hearing the parties, which in my view is not liable to be interfered with in extraordinary writ jurisdiction.

11. For the aforesaid reasons, there is no merit in the petition and the petition is dismissed with no costs.

(N. B. SURYAWANSHI, J.)