

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 5273/2021

**Anusaya Pundlik Kulsunder and ors ..Versus...Additional Collector and SDO
Buldhana and ors**

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders

Mr. A.D.Tote, Advocate for petitioners
Mr. S. Ashirgade, AGP for Respondent Nos. 1 and 2

CORAM : AVINASH G. GHAROTE, J.

DATE : 14/12/2021

Heard Mr. Tote, learned counsel for the petitioners, who takes exception to the impugned order contending that there is no obstruction to the way indicated during the period when the field of the plaintiff is sown, he however submits that the plaintiff is not entitled to use the way when there is no crop in the field of the plaintiff. Reliance is placed upon the partition deed executed between the parties on 11.6.2001 (page 23), which permits the plaintiff to use the land of the defendants for approaching his field. Since an obstruction was made, a complaint came to be filed, which according to the learned counsel for the petitioner, is not in the proper format. That apart, he submits that under the terms of the partition dated 11.6.2001, the plaintiff was not entitled to use of the way absolutely. Further inviting my attention to the findings of the learned Tahsildar at page 34, he indicates that at the time of spot inspection, no obstruction was found and therefore application under

Section 5 of the Mamlatdar Courts Act was not maintainable.

Having heard the learned counsel for the petitioners, I am not inclined to accept the submissions for the reason that the partition deed delineates a specific way for the use of the plaintiff. The language of the right to use the way as delineated in the partition deed cannot be construed to mean that the plaintiff would not be entitled to use the way before the sowing of crops in his field, for the reason that even prior to sowing the access is required for multiple operations to prepare the field ready to be sowed. The averments in partition deed have therefore to be read and construed in light of what has been stated above, as any other interpretation would mean that the petitioners/defendants would be free to obstruct the access of the plaintiff to his field at all times except the sowing season, which cannot be permitted since there is no alternate way demonstrated to be in existence. The contention that the application under Section 5 of the Mamlatdar Courts Act also is not in proper format, does not appear to have any merit for the reason that Sections 8 and 9 of the Mamlatdar Courts Act cast duty upon the learned Mamlatdar to ensure that the petition is in proper format. So also the contention that the plaint contains two different cause of action is also without any merit for the reason that both the said cause of action, one claimed to have arisen on 23.10.2015 and the other on 1.9.2015 are

both within the time frame as contemplated for filing of the proceedings before the learned Mamlatdar. All these factors have been properly appreciated by the authorities below, considering which I do not see any reason or ground to interfere, in view of which the present petition is without any merit and the same is dismissed.

JUDGE

rvjalit