

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

WRIT PETITION NO. 2654/2020

Vijay Sadashivrao Ghatore

...Versus...

Sub Divisional Officer and three others

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

Court's or Judge's orders

Mr. S.S.Dhengale, Advocate for petitioner,
Mr. A.A.Madiwale, AGP for Respondent Nos. 1 and 2
Mr. A.S.Mardikar, Senior Advocate assisted by Shri Ved Deshpande,
Advocate for Respondent Nos. 3 and 4
Mr. P.K.Mohta, Advocate for Respondent No.5

CORAM : AVINASH G. GHAROTE, J.

DATE : 16/11/2021

Heard Mr. Dhengale, learned counsel for the petitioner and Mr. Mardikar, learned Senior Counsel assisted by Mr. Ved Deshpande, learned counsel for Respondent Nos. 3 and 4. Mr. Madiwale, learned AGP appears for Respondent Nos.1 and 2 and Mr. Palash Mohta, learned counsel for Respondent No.5.

2] The petition challenges the order dated 13.09.2019 passed by the learned Mamlatdar, whereby the application filed by the respondent Nos. 3 and 4 for the removal of obstruction on the way as claimed by them in the application dated 18.2.2019 has been directed to be removed. The revision carried before the learned SDO has also been dismissed by the order dated 11.9.2020.

3] Respondent Nos. 3 and 4 claimed to be the owners of Survey No. 5/3 and 5/2D at village Waroli. They claimed that there was a road from the eastern boundary of Survey No.4 for approaching their field, which has been obstructed, considering which obstruction, the above orders have been passed.

4] Mr. Dhangale, learned counsel for the petitioner submits that there was no such road as claimed by Respondent Nos. 3 and 4 and they were using some other way to approach their respective fields. He further submits that the spot inspection report conducted by the learned Tahsildar also indicates that there was absence of road, in view of which the authorities below could not have granted a road, as that was beyond the jurisdiction as conferred upon the learned Mamlatdar under Section 5 of the Mamlatdar Courts Act. He therefore submits that both the orders needs to be quashed and set aside.

5] Mr. Mardikar, learned Senior Counsel for Respondent Nos. 3 and 4 submits that the road in question which was from the boundary of Survey No. 4 owned by the petitioner and Survey No. 32, was being used and the user of such road has been admitted by Respondent No.5 by his pursis dated 13.12.2019. The Respondent No. 5 was defendant No. 2 before the learned Mamlatdar and therefore, such admission on part of Respondent No. 5

would clearly destroy the defence raised by the defendant/petitioner. He therefore submits that the impugned order which clearly recognizes the existence of the way and direction of removal of the obstruction be maintained.

6] Mr. Mohta learned counsel for Respondent No. 5 supports the contention of Mr. Mardikar, learned Senior Counsel for Respondent Nos. 3 and 4. Mr. Madiwale, learned AGP justifies the impugned order.

7] The location of the various fields as indicated in the spot inspection report, dated 24.7.2019, indicates the comparative location of the properties of the petitioner as well as respondent 3 and 4. It is apparent from the said map that Waroli-Harsul Road passes through the southern boundary of Survey Nos. 4, 32, and 31, which are adjacent to each others. Survey Nos. 5/3 and 5/2D are located behind Survey Nos. 32 and 31. The approach to the land of Survey Nos. 5/3 and 5/2 could be either from the boundary of Survey No. 4 and 32 or Survey Nos. 32 and 31 and from the eastern boundary of Survey No. 31. Considering that respondent No.5 himself has admitted the existence of the road and its existence has further been recognized by the authorities below concurrently on the boundary between Survey No.4 and Survey No. 32, I am not inclined to interfere in the concurrent findings recorded by the authorities below, as nothing has been pointed out to indicate that they are perverse or arbitrary.

Mr. Dhengale, learned counsel for the petitioner, in spite of a query to that effect, has been unable to point out anything on record which would indicate availability of another road to approach the fields of the respondent Nos. 3 and 4. In view of the above, I do not see any merit in the petition, the petition is accordingly dismissed.

8] Mr. Dhangale for the petitioner seeks a clarification that while using the road on the boundary of Survey No. 4 and 32, the respondent 3 and 4 should not enter into the land of Survey No.4, so as to avoid any future litigation. Since the road has been granted from the common boundary of Survey Nos. 4 and 32, there is no question of Respondent Nos. 3 and 4 entering into the land of Survey No. 4, except to the extent as stated above.

JUDGE

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