

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

WRIT PETITION NO.4848 OF 2021

Jagannath s/o Ashru Bhatpakhale and others
Vs.

Ramchandra s/o Ananda Shivarkar and others

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

Court's or Judge's orders

Mr. P B. Patil, Advocate for petitioners.
Mr. Mahesh Rai, Advocate for respondent No.1.
Ms. T. Khan, AGP for respondent Nos.2 and 3.

CORAM : AVINASH G. GHAROTE, J.

DATE : 07/12/2021

Heard Mr. Patil, learned counsel for the petitioners and Mr. Rai, learned counsel for the respondents.

2. The learned Mamlatdar has decided the entire matter, on the basis of the spot inspection report dated 24.06.2021, which is as vague as possible, as on perusal of the report nothing can be gathered as to the existence of the road or the obstruction, which is claimed to have been caused. The Patwari map relied upon by Mr. Rai, learned counsel for the respondent No.1/plaintiff at record page Nos.144 and 145, depicts a totally different position altogether, in as much as they do not indicate the existence of the land of Gat No.181, beyond the Chikhali – Jalna road to the southern side rather on the contrary, those maps indicate the location of Gat No.181 to the northern side of the Chikhali – Janla road

which would make it totally unconnected with the land of Gat No.183. The map which is placed on record page 57, which is a measurement map, in RCS No.75/2004 depicts a totally different position altogether, in as much as it indicates, the land of Gat No.181, to the southern side of the Chikhali – Jalna road. The inspection report, does not indicate any map having been prepared by the learned Mamlatdar at the time of inspection of spot, which has led to the position that the location of the way which is claimed by the plaintiff, and the obstruction, is clearly not defined. That being the position, in my considered opinion, the order of the learned Mamlatdar, which directs obstruction to be removed, cannot be sustained, in absence of any map depicting the above position. For the same reason, the judgment in revision also cannot be sustained. Both orders are accordingly quashed and set aside and the matter is remanded back to the learned Mamlatdar, to conduct a fresh spot inspection, prepare a map depicting the existing road, the obstruction created based upon not only the maps relied by the plaintiff at record page Nos. 144 and 145, but also the measurement map, as found in RCS No.75/2004 which is at record page 57, and thereafter, decide the matter afresh.

3. The parties shall appear before the learned Mamlatdar on 20.12.2021, whereupon the learned Mamlatdar shall decide the matter, as early as possible.

(3)

22.wp.4848.2021

4. The writ petition is accordingly allowed in the aforesaid terms. No costs.

JUDGE

Sarkate