

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

WRIT PETITION NO.59/2018

Motiram S/o. Laxman More and Ors. Vs. The Collector, Yavatmal and Ors.

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

Court's or Judge's orders

Shri V. N. Patre, Advocate for Petitioners.
Shri A. A. Madiwale, A.G.P. for Respondent Nos.1 to 4.
Shri S. S. Deshpande, Advocate for Respondent No.5.

CORAM : AVINASH G. GHAROTE, J.

DATE : 11/10/2021.

1. Heard Mr. Patre, learned Counsel for the petitioners. He submits, that both the Courts below have erred in rendering a finding recording the existence of the water course from the land of Survey No.113 belonging to the petitioners and its obstruction by the petitioners, causing inundation of the fields to the East side, as the water course runs East-West. Inviting my attention, to the spot inspection report at page No. 27 on record, he submits that the statement of the owners of the village has been recorded, that the water course was in existence 25 to 30 years earlier which would indicate, that it was no longer in existence since more than two decades. It is therefore submitted, that the impugned orders, which ignore this position are not sustainable in law.

2. Mr. S. S. Deshpande, learned Counsel for the respondent No.5 submits, that the water course is still in existence and because of the blockage to the same, the crop in the field of the respondent No.5 bearing Survey No.108 got inundated which resulted in the filing of the suit before the

learned Mamlatdar. He submits, that the impugned orders are correct as the position on record, indicates the existence of the water course. Mr. Madiwade learned A.G.P. supports the impugned order.

3. A perusal of the spot inspection report dated 06.07.2010, in para No. 2 indicates, that there is a water course in the Western portion of Survey No.113, which has been dug out, which would indicate, the existence of the water course. The maps placed on record at page No. 17 by the respondent No.5, which is not disputed by Mr. Patre, learned Counsel for the petitioners also indicates the existence of the water course. It is thus apparent, that the inspection report dated 06.07.2010 itself demonstrates the existence of the water course and the contrary statements therein of the villagers, would not prevail upon the existing factual position regarding the existence of the water course as recorded therein. In view of which, this position becomes unassailable.

4. Mr. Patre, learned Counsel further contends that the suit has not been filed within a period of 6 months of the date of accrual of the cause of action as required by Section 5 sub-section 3 of the Mamlatdar's Courts Act, 1906, which contention is based upon the statements of some of the villagers referred to in the spot inspection report. The veracity of such statements has already been commented upon above, and therefore, nothing more needs to be said in that regard. In the above view, I am not inclined to interfere in the concurrent findings recorded by the Courts below. The

petition is therefore, dismissed.

5. Pending application(s), if any, stand(s) disposed of.

JUDGE

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