

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 337 OF 2022

1. Gopinath s/o Raibhan Jadhav
Age- 63 years, Occ- Agriculture,
R/o. Pal, Taluka Phulambri,
District- Aurangabad.
(The GPA of the Petitioner No. 2 and 3)
2. Kachru s/o. Raibhan Jadhav
Age- 68 years, Occu- Agriculture,
R/o. Pal, Tal- Phulambri,
District- Aurangabad.
3. Bhagwan s/o. Raibhan Jadhav
Age- 58 years, Occ- Agriculture,
R/o. Pal, Tal- Phulambri,
District- Aurangabad.

...PETITIONERS

VERSUS

1. The State of Maharashtra
Through Collector, Aurangabad.
2. The Deputy Collector,
Aurangabad.'
3. The Tahsildar
Tehsil Office, Phulambri,
Tq. Phulambri, District- Aurangabad.
4. Annasaheb Vithoba Jadhav
Age- Major, Occ- Agriculture,
R/o. As above

...RESPONDENTS

Mr. Satish Gaikwad, Advocate for Petitioners.

Mr. S.B. Pulkundwar, AGP for Respondents No. 1 to 3.

Mr. Pradeep Salunke, Advocate for Respondent No. 4.

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 11th MARCH, 2022

JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard with the consent of parties.

2. This petition impugns the order passed by the Tahsildar, Phulambri, dated 02.09.2021 in case no. RTS-62/23/PAL/02/2020-21, which is confirmed by the Deputy Collector, Aurangabad, in case No. 2021/REVISION/MAMLATDAR/CR-10 on 24.12.2021.

3. The Petitioners are owners and possessors of land Gut No. 175 to the extent of 1 Hectare 82R. The Respondent No. 4 is the owner of Gut No. 175 admeasuring 1 Hectare 78R. The Respondent No. 4 filed an application before the Respondent No. 3 under Section 5 of the The Mamlatdars' Courts Act, 1906 (for short, 'the said Act'), seeking removal of obstruction by the Petitioners on the right of way.

In the application, he claimed that the customary way which was being used since last 39 years is obstructed and damaged by the Petitioners on 130.6.2020 with the help of JCB by creating a big deep pit on the way, hence, the obstruction of the Petitioner to be removed and the right of way of the respondents to be restored. The site inspection panchnama was prepared by the Respondent No. 3 on 14.09.2020. The Respondent No. 3, therefore, allowed the application filed by the Respondent No. 4. The said order is confirmed by Sub Divisional Officer in revision.

4. The learned advocate for the Petitioners assailed the impugned orders on the ground that the application filed by Respondent No. 4 is not in conformity with Section 7 to 9 and 12 of the said Act. The panchnama was conducted in absence of the Petitioners, as according to him the Petitioner No. 1 was admitted due to Covid in Covid isolation center from 12.09.2020 to 29.09.2020 and to that effect certificates are placed on record. According to him, the Petitioners No. 2 and 3 were not served notice of the panchnama. No statement of adjoining land owners are recorded at the time of

conducting panchnama. By relying on the decision of co-ordinate bench of this Court in Gaurakshan Sansthan, Murtizapur Vs. State of Maharashtra and others (2019 (6) Mh.L.J.) and Gajeram and Ors., Vs. The Sub Divisional Officer, Dhule & Ors (Writ Petition No. 5116 of 2018) and Purushottam Umrao Chavan Vs. The State of Maharashtra & others (Civil Revision Application No. 187 of 2019) he states that the impugned orders are unsustainable and the same may be quashed and set aside.

5. Per contra, the learned advocate for Respondent No. 4 supported the impugned orders contending that the concurrent findings of facts are recorded by the revenue authorities, which may not be interfered in the extra ordinary writ jurisdiction. In support of his submission, he placed reliance on decision of Vishwanath s/o Rambhaji Bhalerao & Anr. Vs. Usha w/o. Pralhad Kasbe (2010(5) ALL MR 77).

6. The learned Assistant Government Pleader supports the impugned order and has made available the original record of the matter.

7. I have gone through the record and considered the rival submissions of both the parties.

8. In ***Gajeram and Ors (supra)***, this Court observed thus:-

“10. The record reveals that the application filed by respondent No. 3 was beyond the limitation, as prescribed under section 12 of the said Act. No date is mentioned in the application as to when the obstruction was caused. The application is not in prescribed proforma in terms of section 7 of the said Act. Even the procedure, prescribed under sections 8 to 11 of the said Act, was not followed by the Tahsildar while entertaining the said application. Section 12 of the said Act provides that Tahsildar shall reject the plaint where plaintiff declines to make a statement on oath under section 9 or where the plaintiff is willing to make or has made a statement on oath under section 9, but fails to furnish the particulars specified in section 7 within the time fixed under section 9, then the Tahsildar was expected to follow the said procedure under section 12 of the said Act.”

9. In present case also the application filed by the Respondent No. 4 under Section 5 of the said Act is not in conformity

with Section 7 to 9 and 12 of the said Act. The procedure prescribed in the said sections is not followed by Respondent No. 3. The application is not filed in prescribed proforma in terms of Section 7 of the said Act. Even the procedure prescribed under Sections 8 to 11 of the said Act was not followed by the Respondent No. 3 while entertaining the said application.

10. For the above shortcomings, the Respondent No. 3 was not justified in entertaining the application filed by Respondent No. 4. On that ground alone, the writ petition deserves to be allowed and the same is hereby allowed in terms of prayer clause 'B'.

11. It is made clear that the Respondent No. 4 is entitled to file appropriate proceedings on the basis of same cause of action, which shall be entertained on its own merits by the Respondent No. 3 without being influenced by the observations in the present order.

12. Rule is made absolute in the above terms with no order as to costs.

[NITIN B. SURYAWANSHI]
JUDGE