

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.1175 OF 2021

Raju s/o Kanhaiyalal Basaiye,
Age: 48 years, Occu. Agri,
R/o. Udangaon,
Tq. Sillod Dist. Aurangabad

... Petitioner

Versus

1. The Sub Divisional Officer (EGS),
Aurangabad.
2. The Mamlatdar & Tahsildar,
Sillod, Dist; Aurangabad.
3. Kumodini Shantaram Mahajan
Age: 75 years Occ: Hosehold,
R/o Udangaon,
Tq. Sillod Dist. Aurangabad
4. Nilesh Shantaram Majahan,
Age: 45 years, Occu: Business,
R/o: As above
5. Ramesh s/o Baburao Ahire
Age: 40 years, Occ: Labour,
R/o; As above.
6. Circle Officer, Golegaon (Bu),
Tq. Sillod Dist. Aurangabad

... Respondents

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Advocate for Petitioner : Mr. Yogesh K. Bobade
AGP for Respondents – State : Mr. Y. G. Gujarathi
Advocate for Respondent Nos. 3 to 5 : Mr. Sunil B. Jadhav

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CORAM : NITIN B. SURYAWANSHI, J.

**RESERVED ON : 13th JUNE, 2022
PRONOUNCED ON : 12th JULY, 2022**

JUDGMENT :

1. **Rule.** Rule made returnable forthwith. Heard finally by
the consent of the parties.

2. This petition filed under Article 226 and 227 of the Constitution of India is directed against the judgment and order dated 22-07-2019 passed by respondent No.2 – Mamlatdar & Tahsildar, Sillod, which is confirmed by the order dated 24-12-2020 passed by the Additional Collector, Aurangabad, in revision.

3. The petitioner is owner of land admeasuring 47 R of Gut No.770 and respondent Nos. 3 and 4 are the owners of land admeasuring 1 H 60 R of Gut No.770 situated at Udangaon, Taluka Sillod, District Aurangabad. The petitioner on 12-04-2019 filed application under Section 5 of the Mamlatdars' Courts Act, 1906 (for short 'the Act, 1906') seeking removal of obstruction by respondent Nos. 3 to 5, on his customary road, which he was using to approach land Gut No.770.

4. According to the petitioner, later respondent Nos. 3 to 5 also filed application under Section 5 alleging that the petitioner has obstructed the customary way. The Tahsildar/respondent No.2 allowed the application filed by respondent Nos. 3 to 5 by order dated 22-07-2019. Petitioner challenged the said order by filing revision No.2019/REV/Mamlatdar/CR-287 before the Additional Collector, Aurangabad which is rejected by order dated 24-12-2020. Hence, the present petition.

5. Heard Mr. Yogesh K. Bobade, learned advocate for petitioner, Mr. Sunil B. Jadhav, learned advocate for respondent

Nos. 3 to 5 and the learned Assistant Government Pleader for respondents – State.

6. Learned advocate for petitioner submits that his application was filed at earlier point of time, however, without considering the same respondent No.2 Tahsildar has erroneously proceeded to consider the application filed by respondent Nos. 3 to 5. Panchanama is conducted on 18-04-2019 in violation of Section 14 of the Act, 1906. No notice was given to the petitioner at the time of conducting Panchanama. By relying on the sale deeds placed on record, he submits that the sale deeds do not mention the customary way from western side. By relying on the sale deed filed at page No.98, he submits that the road is found at southern side of Jui river, which is a customary road. By relying on ***Gaurakshan Sansthan, Murtizapur Vs. State of Maharashtra and Others, 2019 (6) Mh.L.J. 473***, he submits that the application filed by respondent Nos. 3 to 5 ought to have been rejected. It is also submitted that the proceedings under Section 5 of the said Act was filed only by respondent No.5, who has no concern with the said customary road and no proceedings was filed by respondent Nos. 3 and 4.

7. Learned advocate for respondent Nos. 3 to 5, on the other hand, submits that it is clear from the panchanama placed on record that the petitioner has ploughed the customary road. R.C.S.

No.87/2019 is filed by the petitioner against respondent Nos. 3 to 5 seeking an injunction that they should not obstruct the peaceful possession of the petitioner and they should not illegally create a way from the suit property. In the said suit, application filed for temporary injunction is not pressed by the petitioner on 08-01-2021. He submits that the petitioner has approached two forums at the same time for same relief. He has placed reliance on the unreported decision of the learned Single Judge of this Court in Writ Petition No.8927/2012 and Writ Petition No. 8934/2012.

8. Learned Assistant Government Pleader has placed on record original record and has supported the impugned order.

9. Panchanama conducted on 18-04-2019 reveals that the customary way passes from Gut Nos. 773 and 774 and further from Gut No.770 and then it passes from Jui river. At the time of site inspection, the petitioner was found to have ploughed the said road.

10. Both the authorities have recorded concurrent findings that road passes from Gut No.770. Admittedly, land of the petitioner and land of the respondent Nos. 3 to 5 are the part of land Gut No.770. Father of the petitioner had purchased the said land. In the sale deed of respondent No.4 dated 30-06-2005, South-North customary road (Pandi) going towards Jui river is shown. Even the said customary road is reflected in the sale deed of the petitioner dated 28-12-1998. Thus, the sale deed of respondent

Nos. 3 and 4 mentions the right of customary way which is from western side of Udangaon, from Gut Nos. 773, 774 and 770 and then passes from Jui river. Therefore, Mamlatdar/respondent No.2 was right in directing the petitioner to remove obstruction created by him by ploughing the customary road, passing from Pandi. Since, both the authorities have seen the record and have held that petitioner has caused obstruction to the customary road passing through Pandi and as the customary road is reflected in all the sale deeds of the respective parties, the concurrent findings of facts recorded by both the revenue authorities are not liable to be interfered with.

11. The apprehension expressed by the learned advocate for petitioner that the road is given from his land situated in Gut No.770 and therefore, respondents would try to pass through his land, cannot be said to be well founded. The customary way appears to be passing through boundaries of respective Gut Nos. 773, 774 and 770.

12. In *Gaurakshan Sansthan, Murtizapur* (supra), the learned Single Judge of this Court held that proceedings under the Act, 1906 must commence by way of a plaint and it is only when the plaint is found to be admissible then Mamlatdar can proceed with the adjudication on merits. For not following the procedure prescribed under Sections 7, 9, 10 and 12 of the Act, 1906, this

Court set aside the order passed by the Mamlatdar in that case.

13. In Writ Petition No.8927/2012, learned Single Judge of this Court has held that the provisions under the Act, 1906 can be said to be directory in nature. Since the orders impugned in the present petition are passed after carrying out Panchanama and considering the relevant record and documents in the form of sale deeds wherein the customary road is mentioned, this Court is not inclined to entertain the argument of the learned advocate for petitioner that for not following the procedure prescribed, proceeding filed by respondent Nos. 3 to 5 is liable to be rejected.

14. The petitioner has already approached the competent Civil Court for ventilating his grievance. No illegality or perversity is found in the concurrent findings of facts recorded by both the revenue authorities. This Court is, therefore, not inclined to entertain the challenge raised in this petition in the extraordinary writ jurisdiction. Writ petition, being devoid of merits, is dismissed.

(NITIN B. SURYAWANSHI, J.)