

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1425 OF 2022

Gangadhar s/o. Ganpat Dhokane
Age- 73 years, Occ- Agriculture,
R/o. Ubare, Tq. Rahuri, Dist.
Ahmednagar.

...**PETITIONER**
[Ori. Opponent]

VERSUS

1. Shri. Kiran Chandrakant Bhapkar
Age- 23 years, Occ- Agriculture.
2. Shri. Parsram Gopinath Bhapkar
Age- 41 years, Occ- Agriculture.
3. Shri. Pandharinath Gopinath Bhapkar
Age- 39 years, Occ- Agriculture.
4. Shri. Navnath Tukaram Bhapkar
Age- 21 years, Occ- Agriculture.
5. Shri. Sitaram Mohaniraj Dhokane
Age- 61 years, Occ- Agriculture.
6. Shri. Balasaheb Gopinath Bhapkar
Age- 46 years, Occ- Agriculture.
7. Smt. Parwatabai Hari Saswade
Age 71 years, Occ- Agriculture.
8. Shri. Babasaheb Hari Saswade
Age- 56 years, Occ- Agriculture.
9. Smt. Ratnabai Machindra Dhokane

Age- 66 years, Occ- Agriculture.

10. Smt. Bhimabai Adinath Patare
Age- 61 years, Occ- Agriculture.

11. Smt. Tarabai Subhash Patare
Age- 46 years, Occ- Agriculture.

12. Shri. Dyandeo Namdev Patare
Age- 51 years, Occ- Agriculture.

13. Shri. Chandrakant Gangadhar Bhapkar
Age- 51 years, Occ- Agriculture.

14. Shri. Raosaheb Gangadhar Bhapkar
Age- 56 years, Occ- Agriculture.
All R/o. Ubare, Taluka- Rahuri,
District- Ahmednagar.

15. The Tahsildar,
Tahsil Office, Rahuri,
District- Ahmednagar.

16. Sub Divisional Officer,
Sub Divisional Office, Shrirampur,
Taluka Shrirampur, Dist- Ahmednagar.

...**RESPONDENTS**

[Ori. Applicants No. 1 to 14.]

...

Mr. D.R. Adhav, advocate for Petitioner.

Mr. D.G. Nagode, advocate for Respondents No. 1 to 14.

Mr. S.W. Munde, AGP for Respondents No. 15 and 16.

.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 14th MARCH, 2022

JUDGMENT :

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

2. The Petitioner challenges the order passed by the Tahsildar in Rasta Case No. 22/2020, in favour of the respondents, which is confirmed in revision by the Sub Divisional Officer.

3. The Respondents No. 1 to 14 filed Rasta Case No. 22/2020 contending that the Petitioner is owner and possessor of agricultural land Gut No. 629/2, admeasuring 76R at village Umbre, Taluka- Rahuri, District- Ahmednagar. The lands of the Respondents No. 1 to 14 are adjacent to each other and adjacent to the land of the Petitioner. The Petitioner has obstructed their right of way by ploughing the same. Pursuant to the filing of said case, Circle Officer conducted site inspection on 15.06.2020. Tahsildar visited the spot on 25.06.2020 and has drawn a panchnama and recorded the statements of adjoining land owners, so also the statements of the Petitioner, and his brother.

4. After hearing the concerned parties and after considering the record, the Tahsildar has allowed the application filed by the Respondents No. 1 to 14 and directed the Petitioner to remove the obstruction and permit the Respondents No. 1 to 14 to use the way of 8-9 feet wide from east side, north side road from Gut No. 629/2 belonging to the Petitioner. The Petitioner unsuccessfully challenged the order passed by the Tahsildar by filing Revision No. 119/2020, before the Sub Divisional Officer. The present petition impugns both the orders.

5. Heard the learned advocate for the Petitioner, learned advocate for Respondents No. 1 to 14 and learned Assistant Government Pleader for State.

6. The learned advocate for the Petitioner strenuously submits that the procedure prescribed under Sections 7 to 12 of the Mamlatdar's Court Act, 1906 (for short 'the said Act') is not followed by the Tahsildar while allowing the application. This aspect is ignored by the Sub Divisional Officer while rejecting the revision. By placing reliance on the decision of this Court in *Gajeram and Ors. Vs. The Sub*

Divisional Officer, Dhule & Ors (Writ Petition No. 5116 of 2018), he submitted that for non following of procedure the impugned orders are vitiated. Further, by placing reliance in *Sudhir Yashwant Dhangade Vs. Ankush Kashiram Bole & Ors.* (2019 (1) ALL MR 825), he submits that as the opportunity of cross examination is not given to the Petitioner, the impugned orders are vitiated.

7. The learned advocate for Respondents No. 1 to 14 on the other hand submitted that the proper procedure was followed by the Tahsildar while deciding the rasta case. He pointed out from the record that the Petitioner's contention is that the Respondents should use road from the river and they should not be permitted to use the road which is directed by the Tahsildar. He further submits that during the proceedings the statements are recorded and the Petitioner was given opportunity of hearing and. By pointing out the statements of adjoining land owners, he submits that even brother of the Petitioner has admitted that the Respondents were using the way from their field and he has no objection for the same. He further submits that in the citation relied upon by the learned advocate for the Petitioner, the Talathi had submitted site inspection panchnama, however, in the

present case the Circle Officer has conducted the first site inspection panchnama and subsequently the Tahsildar has conducted the site inspection panchnama and recorded the statements of adjoining land owners. He submits that, therefore, there is no substance in the petition and the petition is liable to be dismissed.

8. In the record there are two site inspection panchnamas. First by the Circle Officer on 15.06.2020 and second by the Tahsildar himself on 25.06.2020. Both the panchnams confirm that the way which was being used by the Respondents No. 1 to 14 was ploughed and closed by the Petitioner, therefore, the Respondents were not in a position to approach their respective fields. The statement of real brother of the Petitioner, the owner of Gut No. 628 clearly reveals that the Respondents were using right of way from their field since long and he had no objection for the same. The field of Petitioner's brother is adjacent to the field of the Petitioner. Even the adjoining land owners have supported the case of the Respondents.

9. The Tahsildar after hearing the parties and considering the record as well as statements recorded during the course of site

inspection conducted on 25.06.2020 has come to a conclusion that the Petitioner has closed the road which was being used by the Respondents towards eastern boundary by ploughing the same, and therefore, directed the Petitioner to remove the obstruction. The said order is confirmed by the Sub Divisional Officer by a reasoned order. Since, both the orders are passed on the basis of record and actual site inspection conducted by the Tahsildar and statements recorded during the course of site inspection, there is no error, illegality or perversity in the impugned orders.

10. The learned advocate for the Petitioner has relied on *Gajeram and Ors* (supra), wherein this Court has held that for non following of procedure under Section 7, 9, 10, 11 and 19 of the said Act, the proceedings are vitiated. In the present case, except arguing that the said procedure is not followed nothing is brought to the notice of this Court, in what manner the procedure was not followed by the Tahsildar.

11. In *Sudhir Yashwant Dhangade* (supra) the co-ordinate bench of this Court has held that the Mamlatdar has recorded the

statements of respondents and his witnesses in view of applicability of provisions of Section 135, 136, 137 and 138 of the Indian Evidence Act to the proceedings under Section 5 of the Mamlatdar's Court Act, the Petitioner had right to cross examine the respondent no. 1 and his witnesses. Since no such opportunity was given to the petitioner to cross examine them, the proceedings is vitiated.

12. In the present case the statements of the agriculturists, petitioner and his brother were recorded at the time of site inspection. At no point of time, the petitioner sought permission to cross examine the witnesses, whose statements were so recorded. In that view of the matter, the stand of the petitioner that he was not permitted to cross examine the witnesses is an after thought stand and is not acceptable.

13. Considering the site inspection panchnama it is not possible to accept the contention of the petitioner that the respondents should use the way from river side. During rainy season, the respondents would not be in a position to use the said way and they would face serious hardships.

14. On the other hand the record clearly indicates that there was a customary way which was being used by the respondents, which is obstructed by the petitioner. Tahsildar was therefore, justified in allowing the Rasta Case No. 22/2020 and the Sub Divisional Officer was justified in confirming the said order. There is no illegality or perversity in the orders impugned in the present petition. The writ petition being devoid of merits, is dismissed. No costs.

[NITIN B. SURYAWANSHI]
JUDGE