

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3684 OF 2022

Jaintabi Shaikh Mishru Multani

PETITIONER

VERSUS

The State of Maharashtra and Others

RESPONDENTS

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Mr. Mahesh Bhosale Advocate for the petitioner

Mr. S N Kendre, AGP for respondent - State

Mr. A.M. Gholap, Advocate for Respondents No. 4 to 8.

Mr. Santosh Pawde, Advocate for Respondent No. 9.

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 2nd MAY, 2022

ORDER :

1. The petitioner is aggrieved by the order passed by Respondent No. 3/Tahsildar thereby rejecting the application filed by the petitioner under Section 5 of the Mamlatdar's Courts Act, 1906 (for short 'said Act'), on the sole ground that civil dispute is pending in the first appellate Court. The order of the Tahsildar is confirmed by Respondent No. 2/Sub Divisional Officer in revision under Section 23(2) of the said Act.

2. It is the case of the petitioner that there is a decree passed in favour of respondents in a suit filed by the predecessor of Respondents No. 4 to 9. The husband of the petitioner is restrained from creating a new way through any portion of Gut No. 14/1 for approaching Gut No. 17/2. The said suit was ultimately decreed and the appeal challenging the said decree is dismissed. Now second appeal is preferred by the respondents challenging the decree passed by the trial Court. The learned advocate for the respondents submits that there is no stay in the second appeal.

3. The mother of Respondent No. 4 filed Regular Civil Suit No. 03/2005 which was renumbered as Regular Civil Suit No. 5/2019, against husband of the petitioner seeking injunction in respect of Gut No. 14/2. The said suit is decreed and permanent injunction is granted against husband of the petitioner that he should not create a new way from Gut No. 14/2. The husband of the petitioner has challenged the said decree by filing Regular Civil Appeal No. 62/2019, wherein admittedly there is no injunction granted.

4. In these facts, the petitioner filed the said application seeking removal of obstruction from the customary way/vahivat road. The petitioner claimed vahivat road from the boundaries of Gut Nos. 14/2, 17/1, 17/2A and 17/2B. Site inspection was conducted by Tahsildar and points for determination were framed. All the points were held in favour of the petitioner, however, application of the petitioner is rejected only on the ground that Regular Civil Appeal No. 62/2019 is pending in the Bhusaval District Court. The petitioner contends that no new way in contravention of orders passed by the competent Civil Courts is being claimed, and only a customary way/vahivat road which was under use is claimed in the proceedings before Tahsildar. This aspect is not properly appreciated by Tahsildar while rejecting the application of the petitioner.

5. The learned advocate for the respondents strenuously opposed the petition contending that under the guise of customary way/vahivat road the petitioner is claiming a new way.

6. Having heard the rival submission of the respective parties and on going through the record, this Court is of the opinion that

Tahsildar is the competent authority to resolve the dispute between the parties in a proceedings filed under Section 5 of the said Act. Tahsildar has committed an error in rejecting the application filed by the Petitioner on the ground that Regular Civil Appeal No. 62/2019 is pending. Hence, the following order:-

ORDER

- 1] The order dated 08.09.2021 passed by Respondent No. 3 in Case No. vahivat/SR/28/2021 and order dated 07.01.2022 passed by Respondent No. 2 in Revision No. 63/2021, are quashed and set aside.
- 2] The Case No. Vahivat/SR/28/2021 is remanded back to Tahsildar. Tahsildar shall decide the said case by giving opportunity of hearing and opportunity to lead evidence to both the parties. If necessary, Tahsildar may conduct fresh site inspection and record statements of adjoining land owners. The application shall be decided on its own merits within a period of six weeks from the date of receipt of this order.
- 3] All the contentions of respective parties are kept open. It is made clear that Tahsildar shall decide the matter on its own merits without being influenced by the pending

Regular Civil Appeal No. 62/2019. It is also made clear that this Court has not expressed any opinion on merits of the matter.

- 4] With these directions the writ petition is disposed of.

[NITIN B. SURYAWANSHI]
JUDGE