

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

WRIT PETITION NO.3266 OF 2022

Tarabai w/o Sopan Tathe,
Age- 55 years, Occu. Agril.,
R/o Shevge Khurd, Post Kurhehard,
Tq. Bodwad, Dist. Jalgaon.

... Petitioner

Versus

- 1) Vandana w/o Gajanan Tikare,
Age: Major, Occu: Agril.
R/o Shevge Khurd, Post Kurhehard,
Tq. Bodwad, Dist. Jalgaon.
- 2) Nina w/o Dnyandeo Tathe,
Age: Major, Occu: Agril.
R/o Shevge Khurd, Post Kurhehard,
Tq. Bodwad, Dist. Jalgaon.
- 3) The Tahasildar,
Bodwad, Tahasil Office,
Tq. Bodwad, Dist. Jalgaon.
- 4) The Sub-Divisional Officer,
Bhusawal Region, Bhusawal,
Dist. Jalgaon.
- 5) The Additional Collector,
Jalgaon.
- 6) The State of Maharashtra,
Through its Secretary,
Revenue Department,
Mantralaya, Mumbai.

... Respondents

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Advocate for Petitioner : Mr. V. V. Deshmukh
AGP for Respondents – State : Mr. P. N. Kutti
Advocate for Respondent Nos. 1 & 2 : Mr. V. M. Jaware

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CORAM : NITIN B. SURYAWANSHI, J.

RESERVED ON : 09th MARCH, 2022
PRONOUNCED ON : 22nd MARCH, 2022

JUDGMENT :

1. This petition is directed against the order dated 12-01-2022 passed by the Sub-Divisional Officer, Bhusawal, in Vahivaat/Revision/62/2021.

2. By filing application under Section 5 of the Mamlatdars' Courts Act, 1906 (for short 'the said Act, 1906'), the petitioner claimed that she is the owner and possessor of land Gut No.70/1, admeasuring 1 Hectare 53R of village Chinchkheda, Tq. Bodwad. The respondents' land Gut Nos. 67/1 and 67/2 are adjacent to the land of the petitioner. The petitioner used to approach her land from Shevga Dhondkheda Shiv road and then from the boundary of respondents' Gat Nos. 67/1 and 67/2 South-North Vahivaat road which is the customary Vahivaat road and except that there is no other road. The respondent Nos. 1 and 2 obstructed the petitioner from using vahivaat road on 18-10-2019. The Petitioner filed application before the Tahsildar on 19-10-2021 and 11-11-2021 complaining about the obstruction of the respondents. However, no action was taken. On 25-05-2021, the respondents obstructed the petitioner, hence, the present application is filed by the petitioner.

3. Pursuant to the said application, site inspection along with rough sketch of the site (Exhibit-B) was prepared on 07-06-2021. Respondent Nos. 1 and 2 stated at that time that the petitioner can approach her land Gut No.70/1 from Chinchkhed-Dhondakhed Shiv road and then from the boundary of land Gut Nos. 68 and 69. They are ready to allow the petitioner to use the road from the boundary of land Gut No.67/1, if the petitioner gives them road from eastern boundary of land Gut No.70, so as to enable them to approach their land Gut No.73.

4. The petitioner in support of his application filed affidavit of his vendor from whom he purchased the agricultural land. The adjoining land owners have also supported the case of petitioner stating that for approaching the petitioner's agricultural land Vahivaat road is there from Shevga Dhondkheda Shiv road and from there South-North boundary of land Gat Nos.67/1 and 67/2. The said road is used since long as a customary road.

5. The Tahsildar after considering the record and rival contentions came to a conclusion that the customary road used by the petitioner from South-North boundary of land Gat Nos.67/1 and 67/2 is obstructed by the respondents and therefore, allowed the application filed by the petitioner and directed Respondent Nos. 1 and 2 not to

obstruct the petitioner from approaching her land Gut No.70/1.

6. Being aggrieved by the order of Respondent No. 3 Tahsildar, the Respondent Nos. 1 and 2 filed revision before Respondent No. 4 Sub Divisional Officer, which was allowed holding that the petitioner was obstructed from using vahivaat road from boundary of Gut No.67/1 and 67/2 on 18-10-2019 and the application is filed by the petitioner beyond six months' period i.e. on 27-05-2021, which ought to have been dismissed. In the applications filed by the petitioner on 19-10-2021 and 11-11-2021 it is claimed that Shiv road is closed and the same may be cleared. It is not stated that the boundary road of Gut Nos. 67/1 and 67/2 was obstructed. By referring to the village map respondent No.4 held that the land Gut No.67 is one complete Gut and it is not divided. There is no concrete evidence that there was a customary road on its boundary, this evidence is not verified by the Tahsildar. The application filed by the petitioner is not in a prescribed proforma and the witnesses are not examined on oath. Hence, respondent No.4 allowed the revision.

7. Heard the rival submissions of the learned advocate for petitioner, the learned advocate for respondent Nos. 1 and 2 and the learned Assistant Government Pleader for respondents – State.

8. It is clear from the record that the application filed under

Section 5 of the said Act, 1906, is not in prescribed format. There is no verification. The procedure prescribed under Sections 7, 9, 11 and 12 of the said Act, 1906 is not followed by the Respondent No.3 while allowing the Vahivaat Case No.19/2021. The Petitioner filed statements of her vendor and adjoining agriculturists. The opportunity to cross examine them is not given to the respondents. In that view of the matter, for these reasons the order passed by Respondent No.3 is unsustainable and the same is liable to be quashed and set aside.

9. However, the Respondent No. 4 has proceeded to record erroneous findings to the effect that no evidence is placed on record by the petitioner about the obstruction by the respondents on 25-01-2021. Respondent No.4 further erred in placing reliance on the village map and holding that Gut No.67 is one complete Gut and is not divided. The said finding is contrary to the map/sketch prepared at the time of site inspection and also in view of the statements of adjoining agriculturists who supported the case of the petitioner.

10. In the facts of the present case, since the order passed by respondent No.3 in Vahivat Case No.19/2021 is not sustainable for not following the prescribed procedure under the said Act, 1906,

Respondent No. 4 was not justified in recording the finding mentioned in foregoing para. For not following the prescribed procedure Respondent No.4 ought to have set aside the order of Respondent No.3 and should have remanded the matter back for consideration on merits by directing respondent No.3 to follow the prescribed procedure and take decision on merits.

11. For the aforestated reasons, the writ petition is allowed. The impugned order passed by respondent No.4 Sub-Divisional Officer, Bhusawal, is modified to the effect that Vahivaat Case No.19/2021 is remanded back to respondent No.3 Tahsildar, Bodwad, for fresh consideration on merits.

12. Respondent No.3 shall decide the case on it's own merits in accordance with law, within a period of three months from the date of remand. With these directions the writ petition is disposed off.

(NITIN B. SURYAWANSHI, J.)