

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

WRIT PETITION NO.3532 OF 2022

**PAWAN DAYANAD MORE
VERSUS
THE DIVISIONAL COMMISSIONER, AURANGABAD AND OTHERS**

...
Advocate for Petitioners : Mr. Sushant B. Choudhari
AGP for Respondents No. 1 to 5 – State : Mr. P. N. Kutti
Advocate for Respondent No.6 : Mr. Manoj Shinde
...

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 27TH APRIL, 2022

PER COURT :

1. The petitioner is aggrieved by the order passed by respondent No.2 Collector, thereby allowing the revision application filed by respondent No.6, under Section 23(2) of the Mamlatdars' Courts Act, 1906 (for short 'the Act of 1906'). The petitioner filed plaint under Section 5 of the Act of 1906 before respondent No.5 Tahsildar seeking relief of removal of obstruction on the customary road passing through Gut No.8 which is owned by respondent No.6. The Tahsildar allowed the said application and directed the respondents that they should not object the use of the customary road by petitioner for approaching his field. The obstruction on the said road is directed to be removed within a period of 7 days.

2. Being aggrieved by this order, respondent No.6 approached the Collector, Osmanabad by filing revision under Section 23(2) of the Act of 1906. The revision is allowed on the ground that, in village map prepared in 1329 *Fasali* the road claimed by the petitioner is not shown, whereas in the map prepared in 1954 the road passing through Gut No.8 is shown. The road shown in 1954 map goes almost from the middle of Gut No.8, because of which respondent No.6 is likely to suffer financial loss. The Collector, therefore, set aside the order passed by the Tahsildar by observing that if the petitioner and respondents want a new road the said can be sought from the boundary/*Bandh* of the respective agricultural lands and for that purpose they have to approach the Tahsildar under Section 143 of the Maharashtra Land Revenue Code, 1966.

3. Perusal of the record reveals that the Collector has passed a reasoned order. Admittedly, the map of 1329 *Fasali* does not show existence of road, whereas the road is shown in the village map of 1954. It is also admitted position on record that the road claimed by the petitioner goes almost from middle of the land Gut No.8, owned by respondent No.6. If the said road is permitted to be used, respondent No.6 is likely to suffer serious hardship and financial loss. In that view of the matter, the Collector is justified in passing the impugned order.

4. The interest of the parties is protected by the Collector by observing that the parties may approach the Tahsildar under Section 143 of the Maharashtra Land Revenue Code, 1966.

5. Taking into consideration the peculiar facts of the present case, it would be appropriate to ask the parties to approach the Tahsildar by filing proceeding under Section 143 seeking road from the boundary of Gut Nos. 7 and 8 or Gut Nos. 8 and 9. By granting such liberty to the respective parties, the writ petition is disposed off.

6. If such application is filed by either of the parties the same shall be decided within a period of six weeks from the date of filing of such application. Till the decision of such application the petitioner shall be entitled to use the boundary to approach his agricultural field.

7. It is made clear that the observations in this order are *prima facie* and shall not influence the Tahsildar, while deciding the proceedings under Section 143.

(NITIN B. SURYAWANSHI, J.)