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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2977 OF 2014

1. Santosh s/o Popat Tarte PETITIONERS
Age -40 years, Occ – Agril

2. Popat s/o Tulshiram Tarte,
Age – 65 years, Occ – Agril.
Both R/o Palve (Bk) Taluka – Parner,
District - Ahmednagar

VERSUS

1. The Sub Divisional Officer RESPONDENTS
Shrigonda - Parner, Division,
Ahmednagar

2. The Tahsildar,
Parner, District – Ahmednagar,

3. Namdeo s/o Appaji Jarhad,
Age – 55 years, Occ Agril

4. Gaubai w/o Balasaheb Gadilkar,
Age – 50 years, Occ – Agril & Household

5. Shivram s/o Umaji Tarte,
Age – 40 years, Occ – Agril

6. Kisan s/o Mahadu Gadilkar
Age – 50 years, Occ – Agril

7. Prabhu s/o Kisan Gadilkar,
Age – Major, Occ – Agril

8. Ramdas s/o Kisan Gadilkar,
Age – Major, Occ – Agril

9. Dilip s/o Kisan Gadilkar
Age – Major, Occ – Agril

10. Bhanudas s/o Kisan Gadilkar

Age – Major, Occ – Agril

11. Dadasaheb s/o Balasaheb Gadilkar
(Deceased, through LRs)

11.A. Sandip s/o Dadasaheb Gadilkar
Age – 20 years, Occ – Education

11.B. Vikas s/o Dadasaheb Gadilkar
Age – 19 years, Occ -Education
Both R/o Palve-Khurd, Taluka – Parner
District - Ahmednagar

12. Bala s/o Mahadu Gadilkar,
Age – Major, Occ – Agril

13. Dadabhau s/o Bala Gadilkar,
Age – Major, Occ – Agril

14. Abhay s/o Bala Gadilkar
Age – Major, Occ – Agril

15. Sharad s/o Bala Gadilkar
Age – Major, Occ – Agril

16. Paraji s/o Dagdu nawale,
Age – Major, Occ – Agril

17. Kesu s/o Abaji Potghan

DELETED

18. Sakharam S/o Rakhmaji Jarhad
Age – Major, Occ – Agril

19. Kantabai w/o Popat Gadilkar,
Age – Major, Occ – Agril & Household

20. Satish s/o Lalchand Mutha
Age – Major, Occ – Agril
All R/o Palve (Bk) Tq-Parner
District - Ahmednagar

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Mr. V. P. Latange, Advocate for the petitioner

Mrs.V. S. Chaudhari, AGP for respondent - State

Mr. M. R. Sonawane, Advocate for respondents No. 3, 4, 18 &19

Mr.S. G. Bhalerao, Advocate for respondents No.5, 8, 16 and 18

Mr. A. S. Sawant, Advocate for respondents No. 3, 4, 12 and 19

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 8th FEBRUARY, 2022

JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard finally with the consent of the learned advocates for the parties.

2. The order passed by Tahsildar, Parner in Rasta Case No.1 of 2011 and confirmed by the Sub Divisional Officer, Shrigonda in Revision No. 10 of 2013 is impugned in the present writ petition.

3. Respondents No.3 to 19 filed the Rasta Case claiming that the petitioners have blocked their way, which was available from south-north bandh since long and they are not in a position to approach their respective agricultural lands, as there is no alternate way.

4. Pursuant to the proceedings filed by the respondents, a *Panchanama* was conducted, wherein, it was found that due to the fencing erected by respondent No. 20 - Satish Mutha, to whom the petitioners have sold a portion of land Gut No.525, the respondents are unable to approach their respective fields. The Mamlatdar, therefore, ordered removal of the fencing of

respondent No. 20 - Mr. Mutha and directed the petitioners to permit the respondents right of way from south-north common bandh of Gut Nos.541, 542 and 540.

5. The petitioners, being aggrieved by the said order, filed Revision No.10 of 2013 before the Sub Divisional Officer under section 23 (2) of the Mamlatdars Courts Act (for short "said Act") by raising various grounds including that the *Panchanama* was conducted in their absence, the *Panchanama* is signed by the respondents only and no such way, as claimed by the respondents, is available on the site.

The Sub Divisional Officer, after going through the record and hearing the parties, came to the conclusion that the said *Panchanama* reveals that it is properly conducted, which shows old road available to the respondents and compliance of various provisions of the said Act was properly done by the Mamlatdar and opportunity of hearing was given to the parties and, therefore, the revision filed by the petitioners was rejected.

6. Heard learned advocate for the petitioners and learned advocates for the respondents and learned Assistant Government Pleader for the respondent – State

7. Learned advocate for the petitioners strenuously submitted

that the *Panchanama* was conducted in the absence of the petitioners and though alternate way is available to the respondents, they are trying to create a new way from the field of the petitioners. He, therefore, urged to set aside the impugned orders and remand the matter back for fresh consideration to the revenue authorities.

8. Learned advocates for the respondents on the other hand, submitted that the order is passed against respondent No.20 – Mr. Mutha and there was no occasion for the petitioners to be aggrieved by the said orders. He further submitted that the adjoining land owners have supported the case of the petitioners. They, therefore, supported the impugned orders.

9. Learned Assistant Government Pleader adopted the submissions of the respondents and supported the impugned orders. She submitted that intimation in respect of conducting site *Panchanama* was duly given to the petitioners and the petitioners have chosen to remain absent.

10. It emerges from the record that the Mamlatdar has conducted site *Panchanama*, wherein it was found that there was a way available, as was being claimed by the respondents. During the site inspection it was revealed that respondent No.20

- Mr. Satish Mutha, to whom the petitioners have sold a portion of land Gut No. 525 has erected fencing, which has blocked the old way available to the respondents. After considering the statements of the agriculturists, the Mamlatdar came to the conclusion that there were signs of way from the common bandh of Gut Nos. 541, 542 and 540, however, respondent No. 20 - Mr. Mutha has erected fencing to his land Gut No. 525, due to which said way is blocked. The Mamlatdar, therefore, has rightly allowed, the application filed by respondents No. 3 to 19 and directed removal of the said fencing and permitted the respondents to use the right of way from south – north common bandh of Gut Nos. 541, 542 and 540.

11. It further appears from the record that while conducting site *Panchanama* as per the documents placed on record, intimation about site inspection was given to the petitioners, however, the petitioners have refused to sign the site *panchanama*. The village map also supports the contention of the respondents.

12. The Sub Divisional Officer has also recorded valid reasons while rejecting the revision filed by the petitioners.

13. Taking into consideration the site inspection *panachanama*,

the village map and the impugned orders, this court is of the opinion that no fault can be found with the orders impugned in the present writ petition. Both the authorities have passed well reasoned orders and no case is made out by the petitioners to interfere in extra ordinary writ jurisdiction. The writ petition, being devoid of merit, is dismissed. Rule discharged. No costs.

[NITIN B. SURYAWANSHI]
JUDGE