

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

WRIT PETITION NO.5390 OF 2022

1. Bhausahab Dnyandeo Ingale
Age : 46 years, Occu: Agri.
2. Abasaheb Dnyandeo Ingale
Age : 66 years, Occu: Agri.
3. Raosaheb Dnyandeo Ingale
Age : 50 years, Occu: Agri.
4. Ramchandra Rangnath Ingale
Age : 75 years, Occu: Agri.
5. Deepak Laxman Ingale
Age : 48 years, Occu: Agri.
6. Sanjay Laxman Ingale
Age : 50 years, Occu: Agri.

R/o at post Pisorekhand,
Tq. Shrigonda,
Dist. Ahmednagar.

... PETITIONERS
(Org. respondents)

VERSUS

1. The State of Maharashtra
through the Collector,
Ahmednagar, District - Ahmednagar
2. The Sub-Divisional Officer,
Shrigonda-Partner Division
Dist. Ahmednagar.
3. The Tahasildar
Tahsil Office, Shrigonda,
Tq. Shrigonda, Dist. Ahmednagar.
4. Shashikant Sarjerao Ingale
Age : 53 years Occu: Agri.
5. Bharat Sarjerao Ingale
Age : 48 years, Occu: Agri.
6. Pantig Rangnath Ingale
Age : 71 years, Occu: Agri.
7. Nitin Pantig Ingale

- Age : 49 years, Occu: Agri.
8. Jaysing Rangnath Ingale,
Age : 66 years, Occu: Agri.
 9. Maruti Rangnath Ingale
Age : 67 years, Occu: Agri.
 10. Jalindar Rangnath Ingale
Age : 56 years, Occu: Agri.
 11. Anil Bajirao Ingale
Age : 51 years, Occu: Agri.
 12. Shekhar Bajirao Ingale
Age : 51 years, Occu: Agri.
 13. Bhaskar Jaysing Ingale
Age : 49 years, Occu: Agri.
 14. Narsing Jaysing Ingale
Age : 53 years, Occu: Agri.
 15. Pradeep Laxman Ingale
Age : 46 years, Occu: Agri.
 16. Shakuntala Laxman Ingale
Age : 61 years, Occu: Household
 17. Baban Kisan Ingale
Age : 49 years, Occu: Agri.
 18. Yamunabai Sarjerao Ingale
Age : 49 years, Occu: Household
 19. Vijayanta Kalyan Pandharkar
Age : 61 years, Occu: Household
 20. Chhaya Deepak Ingale
Age : 41 years, Occu: Household
 21. Ashabai Sanjay Ingale
Age : 46 years, Occu: Household
 22. Latabai Shivram Jagtap
Age : 68 years, Occu: Household
 23. Sojabai Dnyandeo Ingale
Age : 80 years, Occu: Household
 24. Balu Dnyandeo Ingale
Age : 56 years, Occu: Agri.

R/o at post Pisorekhand,
Tq. Shrigonda, Dist. Ahmednagar.

... RESPONDENTS

(Resp. Nos.4 & 5 are org. applicants)
Resp Nos.6 to 24 are added as formal parties)

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Advocate for Petitioners : Mr. P.V. Latange
AGP for Respondent Nos.1 to 3 : Mr. S.N. Morampalle
Advocate for Respondent Nos.4 and 5 : Mr. V.D. Hon, Senior counsel i/b.
Mr. A.V. Hon

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CORAM : MANGESH S. PATIL, J.

DATE : 12.07.2022

JUDGMENT :

Heard. Rule. The Rule is made returnable forthwith. Learned AGP waives service for respondent Nos.1 to 3. Learned Senior advocate Mr. Hon waives service for respondent Nos.4 and 5. At the joint request of the parties, the matter is heard finally at the stage of admission.

2. The petitioners who are some of the defendants in a suit filed by the respondent Nos.4 and 5 under Section 5(2) of the Mamlatdars' Courts Act, 1906 (herein after 'the Act') are aggrieved by the judgment and order passed by the Mamlatdar decreeing the suit and dismissal of their revision preferred under Section 23(2) of that Act by the learned Sub-Divisional Officer thereby confirming the order of the Mamlatdar.

3. The learned advocate Mr. Latange for the petitioners would submit that the authorities below have not borne in mind their powers and jurisdiction under the Mamlatdar Courts Act. They have failed to take into consideration a distinction between their powers under that Act and the powers under Section 143 of the Maharashtra Land Revenue Code, 1966 (herein after 'the Code'). On respondent Nos'.4 and 5 own showing, the right being claimed in respect of the way which is allegedly obstructed by the petitioners and the rest of the respondents is a new way. Already there is another way in existence which is old one for the respondent Nos.4 and 5 to reach to their land Gut No.123 which passes along northern boundary of

land Gut Nos.66, 122 and 123. The disputed way is in fact a way created by the petitioners and the rest of the respondents internally through their own lands for their exclusive use. The respondent Nos.4 and 5 had no right to use it. Ignoring all such state of affairs, the authorities below have recognized a right in the respondent Nos.4 and 5 which has never been in existence. In spite of availability of an alternate and suitable way for the respondent Nos.4 and 5 to reach their land Gut No.123 along the northern boundary, a new road is created. Even the learned Sub-Divisional Officer failed to take into consideration all the aforementioned facts and circumstances. Both the orders are illegal and may be quashed and set aside. In support of his submission he would place reliance on the decision of a coordinate bench of this Court in the matter of **Krushna Damaji Choudhari and Anr. Vs. Additional Commissioner, Nagpur Division, Nagpur and Ors.; Writ Petition No.5765/2010 dated 12.10.2011.**

4. Learned AGP as also the learned Senior advocate Mr. Hon for the respondent Nos.4 and 5 support both the judgments and orders.

5. One need not delve deep to reiterate a marked distinction between the powers of the Mamlatdar under Section 5(2) and the Powers of Tahsildar under Section 143 of the Act. The distinction has been elaborately laid down in the matter of **Krushna Damaji Choudhari** (supra).

6. As can be seen from the order passed by the Mamlatdar and confirmed by the learned Sub-Divisional Officer, as also the suit filed by the respondent Nos.4 and 5, the latter had specifically averred about existence

of a customary way which they had demarcated in a rough sketch annexed to the plaint and even the former have decided the suit in accordance with the provisions of Section 5(2) of the Act.

7. It appears that the whole emphasis of the learned advocate Mr. Latange for the petitioners seems to be on the description of the two ways asserted in the plaint and noticed at the time of Panchanama, wherein the disputed way has been described as 'new' and the one passing along the northern boundary of Gut Nos.66 and 122 as also the land of the respondent Nos.4 and 5 Gut No.123 as 'old'. It would be stretching too much to refer to such a phraseology to conclude that the disputed way is not in existence and a new way is being claimed. Linguistically 'new' and 'old' are relative terms and if the northern side way has been in existence even before the disputed way was established, the parties are bound to refer to these two ways as 'old' and 'new' merely for the sake of reference. It cannot be said that the respondent Nos.4 and 5 and even the Panchas in whose presence the Panchanama was recorded were intending to refer to the disputed way as a way which has not been in existence but was intended to be laid for the first time as a new way.

8. In fact, even the petitioners and the rest of the respondents have not been disputing existence of the way in dispute. According to them it is a way laid by them as the internal way for their exclusive use. Therefore, the submission of the learned advocate for the petitioners to describe the disputed way as if nothing is in existence at the spot by

referring to the phraseology used in the plaint as well as the Panchanama is not tenable.

9. The dispute is as to if the disputed way has been in existence for the use of the respondent Nos.4 and 5 who are the owners of Gut No.123. The existence of any other alternate way, may be a pre-existing way, cannot be a matter in issue to be decided in a proceeding under Section 5(2) the scope of which is as to if there has been a customary way in existence for the use of the persons claiming right to pass over it. Unlikely an easement of necessity, the plaintiffs in such a suit are not expected to establish any necessity. Existence of a way for their use and the alleged obstruction are the only ingredients to be established before a claim under Section 5(2) can succeed, of course subject to the limitation provided under Section 5(3).

10. Assuming for the sake of arguments that the petitioners' claim that the disputed way is the internal way created by them for their exclusive use and use of the rest of the respondents who were defendants before the Mamlatdar, one cannot comprehend as to how and why this internal road could reach up to their land Gut No.123 up to its eastern boundary. Learned advocate Mr. Latange for the petitioners would submit that the fact that the disputed way extends up to the eastern boundary of the land of the respondent Nos.4 and 5 is factually incorrect and it has been specifically denied by the petitioners. True it is that there seems to be such a stand taken by the petitioners.

11. However, in this regard it is pertinent to note that during

pendency of the petition the respondent Nos.4 and 5 submitted Civil Application No.9090/2022 for vacating the interim relief granted to the petitioners during the summer vacation of this Court. In that application it has been specifically averred that the Mamlatdar had passed the order under challenge on 29.11.2021 and since thereafter they had transported sugarcane by using the disputed way and even other agriculture produce, even the disputed way is being used by their children for going to the school and such was the situation till the petitioners could succeed in obtaining ad-interim relief during vacation on 17.05.2022 *ex parte*. Even the photographs have been annexed with that application showing that the way has been blocked by putting up an iron barrier and by dumping trash across the way. The petitioners have not controverted this state of affairs. I am pointing out this circumstance to indicate that existence of the disputed way right up to the eastern boundary of land Gut No.123 belonging to the respondent Nos.4 and 5 is writ large.

12. If such is the state of affairs, it cannot be said that the observations and the conclusion of the authorities below, are either perverse, arbitrary or capricious so that this Court could cause any interference in exercise of the Writ Jurisdiction.

13. The Writ Petition is dismissed. The Rule is discharged.

(MANGESH S. PATIL, J.)