

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

WRIT PETITION NO. 5843 OF 2020

1. Saraswatibai W/o. Malhari Zagade,
Age: 65 years, Occu: Agriculture,
2. Kalyan S/o. Tulshiram Shinde,
Age: 47 years, Occu: Agriculture,
Both R/o: Devinimgaon, Tq.Ashti,
Dist. Beed.

... **Petitioners**

Versus

1. Bhagwan S/o. Yadavarao Wabde,
Age: Major, Occ: Agriculture,
2. Subhash Mahadu Anarse,
(Since deceased through LRs)
- 2/1. Dyandev S/o. Subhash Anarse,
Age: Major, Occ: Agriculture,
- 2/2. Babasaheb Subhash Anarse,
Age: Major, Occ: Agriculture,
3. Karbhari Mahadu Anarse,
Age: Major, Occ: Agriculture,
4. Kalyan Tulsiram Anarse,
Age: Major, Occ: Agriculture,
5. Asaram Tulsiram Anarse,
Age: Major, Occ: Agriculture,
6. Sanjay Pandurang Shinde,
(Since deceased through LRs)
- 6/1. Kalidas Sanjay Shinde,
Age: Major, Occ: Agriculture,

7. Navnath Pandurang Shinde,
Age: Major, Occ: Agriculture,
8. Ashok Pandurang Shinde,
Age: Major, Occ: Agriculture,
9. Parmeshwar Pandurang Shinde,
Age: Major, Occ: Agriculture,
10. Chandrakant Bansi Shelar,
Age: Major, Occ: Agriculture,
11. Chandu Baburao Phalke,
Age: Major, Occ: Agriculture,
12. Pralhad Natha Zagade,
Age: Major, Occ: Agriculture,
13. Baban Prabhakar Phalke,
Age: Major, Occ: Agriculture,
14. Vishnu Prabhakar Phalke,
Age: Major, Occ: Agriculture,
15. Gahininath Vithoba Shinde,
Age: Major, Occ: Agriculture,
16. Kusum Gorakh Shinde
Kusum Maroti Shinde
Age: Major, Occ: Agriculture,
17. Subhash Vithoba Shinde,
Age: Major, Occ: Agriculture,
18. Namdeo Tatyaba Shinde,
Age: Major, Occ: Agriculture,
19. Laxman S/o. Rambhau Phalke,
Age: Major, Occ: Agriculture,

20. Bhagwan S/o. Rambhau Phalke,
Age: Major, Occ: Agriculture,
21. Gahininath S/o. Baburao Phalke,
Age: Major, Occ: Agriculture,
22. Ajinath S/o. Vithoba Shinde,
Age: Major, Occ: Agriculture,
All R/o: Devinimgaon, Tq. Ashti,
Dist: Beed.
23. The Tahsildar
/ Mamlatdar Court Ashti,
Dist. Beed.
24. Sub-Divisional Officer,
Patoda, Dist: Beed.

... **Respondents**

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Advocate for Petitioners : Mr. G.R. Syed
Advocate for Respondents : Mr. Nisargraj Garje
APP for Respondent-State : Mr. S.N. Morampalle

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CORAM : M.G. SEWLIKAR, J.
DATE : 6th September, 2022

ORAL JUDGMENT :-

Rule. Rule made returnable forthwith. With the consent of the parties taken up for final hearing at the admission stage.

2. Respondent nos.19 to 22 applied to the Tahsildar for getting the foot-way from survey nos.64, 65 and 66. Tahsildar made the panchanama of survey nos. 64, 65 and 66. In the panchnama it is shown that there was customary foot-way from survey nos.51, 52, 53, 70 and 69. Accordingly,

Tahsildar granted the foot-way from the survey nos.52 to 70, 70 to 53, 63 and 64 to have access to survey nos.63, 64 and 65.

3. The petitioners preferred appeal against this decision of the Tahsildar to the Sub-Divisional Officer (the 'SDO'). The SDO dismissed the appeal of the petitioners. The petitioners have impugned this decision by way of this writ petition.

4. I have heard learned counsel Shri Syed for the petitioner, Shri Garje for the respondent nos.1, 10, 11, 17, 19 to 22, learned AGP Shri Morampalle for the State.

5. Shri Syed submits that survey no.53 and 64 are adjacent to each other and because of the foot-way granted by the Tahsildar, his lands have been divided into two. He further submits that the respondent nos.9 to 22 have foot-way from the western side of survey nos.63 and 65 which goes towards east and thereafter it goes towards south. He submits that petitioners are themselves using this road. This road is named as Kadadevi Nimgao Road to Raut Vasti. He further submits that petitioners were not served with notice before making the panchanama. This point was raised before the SDO in appeal but the SDO did not consider this matter and dismissed the appeal.

6. The learned AGP submits that petitioner no.2 was served with the

notice. Record shows that the petitioners were served with the notice. Petitioner no.1 was also called to the office of Tahsildar. He submits that there is no substance in the contention of the petitioners that they were not served with the notices before preparation of the panchanama.

7. I have given thoughtful consideration to the submissions made by all the learned counsel.

8. The foot-way granted by the Tahsildar is from survey nos.69, 70, 64, 53. Between survey nos.53 & 64 there is already a common bund and from this common bund road is given. Therefore, since there is already a common bund, it cannot be accepted that because of the road the land of the petitioners i.e. survey nos.53 and 64 has been divided into two. So far as alternate foot-way is concerned, it cannot be said to be an alternate foot-way because by this foot-way the respondent nos.19 to 20 will have to first go towards west then towards east and again turn towards south. It cannot be called an alternate foot-way. The Petitioners are using that road because from survey no.53 they can directly approach to the highway but this is not the case with the petitioners. They have to take a longer route to reach the main road. Therefore, this submission to that extent cannot be accepted. He submits that because of the road given by the Tahsildar, respondents are likely to damage the crop of the petitioners. Learned counsel Shri Garje for the

respondent nos. 1, 10, 11, 17, 19 to 22 submits that from their side no such attempt will be made.

9. Therefore, there is no substance in the writ petition and it is dismissed, with no order as to costs. Rule stands discharged. Record be sent back to the Tahsildar. Parties to act on an authenticated copy of this order.

[M.G. SEWLIKAR, J.]

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