

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

WRIT PETITION NO.6975 OF 2022

UMA ASHOK AGRAWAL AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA THROUGH DY. COLLECTOR RE-
HABITATION AND OTHERS

...
Advocate for Petitioners : Mr. Chandrakant R. Thorat
AGP for Respondents: Mr. K.B. Jadhavar
...

CORAM : MANGESH S. PATIL, J.

DATE : 14.07.2022

PER COURT :

Heard the learned advocate Mr. Thorat for the petitioners. They are questioning legality of the orders in a proceeding under Section 5(2) of the Mamlatdar Courts Act, 1906 (herein after 'the Act') as also the order passed by the Sub Divisional Officer in their revision preferred under Section 23(2) of that Act which is dismissed by the order under challenged.

2. The contesting respondent Nos.3 to 10 had filed the suit asserting that a customary way along the common boundary of the two villages popularly known as "Shiv Rasta" has been obstructed and for its removal.

3. The learned advocate Mr. Thorat for the petitioners would submit that the petitioners were not made defendants in the suit. No opportunity of being heard was extended to them. Though their lands are

adjoining to the disputed Shiv Rasta, they were not noticed. They have not been disputing existence of the Shiv Rasta on the village map. Their version is that it is not being under any use for last more than 50 years. The respondent Nos.3 to 10 have purchased their respective lands adjacent to the disputed way in the year 1998 but have never raised any grievance. There is a suitable alternate way available for them which is developed by the Zilla Parishad by spending huge money. He would, therefore, submit that the judgments and orders which have been passed behind the back of the petitioners should be quashed and set aside.

4. Learned AGP supports both the orders. He would submit that already a notice dated 16.06.2022 has been issued in order to implement the order.

5. I have carefully considered the rival submissions and perused the papers.

6. Even the petitioners admit that the disputed way is the Shiv Rasta which has been in existence for last at least 50 years albeit according to them it is not in use. The fact remains that existence of the way in the record and it being a conventional way stands admitted. Once having reached such a conclusion regarding existence of the way in question for so many years, nobody should have any right title or interest in such a Shiv Rasta even if it could be a fact that for whatever reason it is not being used. Mere non-user of a public way would not give any right to the adjoining owners to take it under their cultivation.

7. If the way has been in existence, it has been kept open and any obstruction created by anybody is liable to be removed by the power vested in the Mamlatdar under Section 5(2) of the Act.

8. True it is that apparently, the petitioners were not arrayed as defendants in the suit before the Mamlatdar. However, pertinently, they along with the persons who were arrayed as defendants had suffered the order in the sense that they all had challenged it jointly by preferring a revision under Section 23(2) of that Act before the learned Sub Divisional Officer. It is thereafter, not being successful that the petitioners have approached this Court, the original defendants are nowhere to be found. They have not even been made parties to this proceeding.

9. Be that as it may, it would be quite convenient for the petitioners to now turn around and question legality of the order passed by the Mamlatdar on the ground that they were not heard having not been made parties to that suit. In my considered view when they along with the persons who were defending the suit had joined hands and had preferred the revision, it would not be proper for them to now agitate about the suit having been decided even when they were not parties and make capital of that circumstance.

10. Since existence of the Shiv Rasta for years together even on the Government Record stands admitted, merely by passage of time and its non-user, it cannot be said that the authorities below had committed an error or illegality in expecting the way to be cleared of any obstruction.

11. In exercise of the writ jurisdiction it would be difficult to cause any interference in the orders which merely intend to preserve the status of the Shiv Rasta as a public way.

12. The Writ Petition is dismissed.

(MANGESH S. PATIL, J.)

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