

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

Shubham Suryakant Dhamane and Another PETITIONERS

The Sub Divisional Officer and Others

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 7th OCTOBER, 2022

ORDER :

1. The petitioners are aggrieved by the orders passed by the Tahsildar, Shrigonda in Rasta Vahivat Case No. 27 of 2020, confirmed by the Sub Divisional Officer, Shrigonda in Revision Application No. 221 of 2021.
2. Respondent No.3 has filed the said case under section 5 (2) of the Mamlatdar's Courts Act seeking removal of obstructions created by the petitioners on his customary road, for approaching his land Gut No. 105. The petitioners resisted the said plaint, by filing a detailed written statement. The Tahsildar allowed the application, on the basis of the spot

inspection and the *Panchanama* carried out during the same. The findings recorded by the Tahsildar are confirmed by the Sub Divisional Officer. Hence the present writ petition.

3. Heard learned advocate for the petitioners, learned Assistant Government Pleader and learned advocate for respondent No.3.

4. Learned advocate for the petitioners assailed the impugned orders contending that no reasonable and fair opportunity is not given to the petitioners to contest the matter before the Tahsildar. According to him, the right of cross-examination was denied to the petitioners and on that ground the impugned orders are liable to be quashed and set aside. He supports said argument by relying on "***Sudhir Yashwant Dhangade V/s Ankush Kashiram Bole and Others***" 2019 (1) ALL MR 825. He further submits that the contentions raised by the petitioners in their written say are ignored by the Tahsildar and the Sub Divisional Officer, while passing the impugned orders. He, however, fairly admits that the plaint of the civil suit filed by the petitioner challenging the order passed by the Tahsildar is returned to him for complying with the provisions of section 80 of the Civil Procedure Code. Thereafter, the petitioners have filed the present writ petition.

5. Learned advocate for respondent No.3 and the learned Assistant Government Pleader, on the other hand, support the impugned orders.

6. The record reveals that the Tahsildar has passed the impugned order on the basis of site inspection and *Panchanama* carried out during it. In the site inspection *Panchanama*, the obstruction created by the petitioners on the customary road is clearly reflected. Considering that and after hearing the parties and on going through the record, the Tahsildar has rightly allowed the proceedings filed by the respondents. The order of the Tahsildar is confirmed by the Sub Divisional Officer.

7. There is no substance in the argument of the petitioners that since no opportunity of cross-examination was granted, the impugned orders are liable to be set aside. It is clear from the record that in the proceedings before the Tahsildar, no statements are recorded and the impugned order is passed on factual situation noticed at the time of site inspection, which is reflected in the *Panchanama*. The petitioners have not asked permission to cross-examine the respondent, before the Tahsildar.

8. Tahsildar had recorded Statements of the parties in

"Sudhir Yashwant Dhangade" (*supra*), therefore, this Court held that it was duty of the Tahsildar to give opportunity of cross-examination to the petitioner therein. Such are not the facts of the present case.

9. For the aforesaid reasons and taking into consideration the aspect that concurrent findings of fact are recorded by the Tahsildar and the Sub Divisional Officer, the impugned orders are not liable to be interfered with in extraordinary writ jurisdiction. There is no substance in the petition. The petition is dismissed.

[NITIN B. SURYAWANSHI]
JUDGE