

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 12286 OF 2019

Anusaya Keru Koradkar & Anr.

...Petitioners

Versus

The State of Maharashtra & Others

...Respondents

.....

Mr. Shubham Jayabhar h/f. Mr. D.R. Jayabhar, Advocate for the petitioner

Mr. S.W. Munde, AGP for respondent – State.

Mr. Amol Gawali, Advocate for respondents No. 2 to 7.

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[CORAM : NITIN B. SURYAWANSHI, J.]

RESERVED ON: 29th AUGUST, 2022

PRONOUNCED ON: 10th NOVEMBER, 2022

ORDER :

1. By this petition filed under Article 227 of Constitution of India, the petitioners challenge the order passed by the Deputy Collector, Land Acquisition No. 13, Ahmednagar in proceeding MCA No 23/13/2018, dated 11.07.2019.

2. The petitioners filed Vahivat Case No. 7/2016 under section 5(2) of Mamlatdar Court's Act, 1906 (for short 'said Act'), claiming removal of obstruction by the respondents No. 2 to 7 in gut no. 30. The petitioners claimed that they are the owners of gut nos. 13, 32, 33 and 34, situated at village Tandulwadi

Dumala and respondents are the owners of gut no. 30, situated at village Tandali Dumala. The respondents opposed the said application contending that there is east-west customary road in gut no. 41, if that is cleared all the agriculturists will be benefited. Respondent No. 2 has filed Vahivat Cast No. 70/2014 before Tahsildar, Shrigonda, claiming removal of obstruction from gut no. 41. If the said obstruction of the customary road is removed, then the agriculturist who owned gut no. 30 and gut nos. 31 to 38, all can approach to Tandali Dumala Nagar pakka road. They therefore claimed that Vahivat Case No. 70/2014 be decided early.

3. Tahsildar after conducting site inspection on 13.03.2018 held that the respondents have ploughed gut no. 30 and have taken sugarcane crop there. Marks of earlier existing road were found there, hence he allowed the prayer of the petitioner and directed removal of obstruction of north-south customary road situated at western side of gut no. 30 by removing sugarcane crop.

4. Respondents challenged the said order by filing revision before the Sub Divisional Officer. The revision came to

be allowed on the ground that Tahsildar has no power to grant new road, which is not in existence, while deciding the matter filed under section 5(2) of the said Act. It is further held that since alternate way is available from the side of gut no. 41, there is no need to give customary road from gut no. 30. This order is impugned in the present petition.

5. I have duly considered the submissions of learned advocate for the petitioners, learned advocate for the respondents and learned Assistant Government Pleader for State. Perused the grounds taken in the writ petition, documents filed along with writ petition and the impugned orders.

6. It is not in dispute that Vahivat Case No. 70/2014 is decided in favour of respondents and said order is confirmed by this Court in Writ Petition No. 13688/2018. Thus, the petitioners have road to access their field from gut no. 41.

7. Perusal of record indicates that the approach of the Sub Divisional Officer that while exercising powers under section 5(2) of the said Act, Tahsildar cannot grant alternate way, is right. Since alternate way is available to the petitioners from the

side of gut no. 41, there is no need to give way to the petitioners from gut no. 30. The petitioners have failed to substantiate their contention that customary way was available from gut no. 30.

8. For the aforesaid reasons, no fault can be found with the order of Sub Divisional Officer, impugned in the present petition. No case is made out by the petitioners to warrant exercise of extraordinary writ jurisdiction. The writ petition being devoid of merit is dismissed.

[NITIN B. SURYAWANSHI, J.]