

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

WRIT PETITION NO.10930 OF 2017

Ramesh s/o Jalindar Darkunde & Anr. ... Petitioners

Versus

Ashok Suryabhan Kale & Ors. ... Respondents

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Mr. N. D. Sonvane, Advocate for the Petitioners

Mr. A. A. Fulpagare h/f Mr. P. R. Katneshwarkar for Respondent
Nos.1 to 6

Mr. S. N. Kendre, AGP for Respondent Nos.7 & 8

...

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 5th September, 2022

PER COURT :-

1. By this petition under Article 227 of the Constitution of India, the petitioners challenge the order dated 28-04-2017, passed by Tahsildar, Newasa in Rasta Case No.58/2016, which is confirmed by the Sub-Divisional Officer, Ahmednagar in RTS Revision No.92/2017.

2. The petitioners are the owners of Gat Nos.42 and 38/2 of Village Imampur, Taluka Newasa, District Ahmednagar. The respondents being owners of Gat Nos.38/1 & 38/3 filed Rasta Case No.58/2016 before the Tahsildar, Newasa, claiming that from the middle of Gat No.42, there is a shivar road (village road) which is

being used by the agriculturist and owners of Gat Nos.38/1, 38/2, 38/3 and 36 for more than 100 years. The said road is obstructed. The petitioners opposed the said proceeding contending that if the road which is claimed by the respondents is to be granted, Gat No.42 will be divided in two parts. There is an alternate road, which is Nimbhari Pachegaon road from southern side of Gat No.52 and from the boundary of Gat Nos.40, 41 and 42, available to the respondents for approaching their respective fields.

3. A site inspection panchanama was conducted on 27-02-2017. The said panchanama was not acceptable to the petitioners, as the same was conducted in absence of the petitioners. Therefore, the petitioners approached before this Court by filing a Writ Petition No.3400/2017. The learned Division Bench directed the Tahsildar, Newasa, to consider the application filed by the petitioners on its own merits.

4. Thereafter, second site inspection panchnama was conducted on 28-04-2017 and the Tahsildar decided the matter, thereby directing the petitioners to remove obstruction on the road claimed by the respondents. The same is confirmed by the Sub-Divisional Officer, Ahmednagar. Hence, the present petition.

5. I have given due consideration to the rival submissions of the learned Advocate for the petitioners and the learned Advocate for

respondent nos.1 to 6 as well as the learned Assistant Government Pleader for the respondent nos.7 & 8. Perused the original record produced by the learned Assistant Government Pleader.

6. The record shows that second site inspection panchnama was conducted by the Tahsildar on 28-04-2017 between 4:25 pm to 5:20 pm. In the impugned decision, at the beginning, the Tahsildar has mentioned date of decision as 28-04-2017. At the end of decision, the date is mentioned as 11-05-2017. The Tahsildar has stated in the impugned decision that hearing has taken place on various dates and the last date of hearing was 28-04-2017.

7. From the roznama maintained by the Tahsildar, the last date mentioned in the roznama is 13-04-2017. Further dates and what happened on the subsequent dates are not mentioned in the roznama.

8. It is a grievance of the petitioners that after conducting panchanama upto 5:20 pm on 28-04-2017, no hearing was given to the petitioners before passing the impugned decision.

9. The learned Advocate for the respondents controverted this submission, contending that by mistake, at the beginning of the impugned decision of the Tahsildar the date 28-04-2017 is mentioned. In fact, the decision is rendered on 11-05-2017. He submits that it is not possible to accept this submission, as

admittedly, as per the time mentioned in the said spot inspection panchanama, it was conducted at 5:20 pm. Thereafter, it cannot be said that hearing was given to the parties and then the decision is rendered.

10. Apart from the above, there does not appear any evidence on record to show that the road, on which, obstruction is claimed by the respondents is customary road in use since more than 100 years. Nothing in support of the said submission is brought on record. Both the parties have not led any evidence in support of their respective contentions. In that view of the matter, the impugned order cannot be sustained and the same is liable to be quashed and set aside, so also the order passed by the Sub-Divisional Officer, Ahmednagar..

11. In the result, following order is passed;

ORDER

(i) Writ Petition is allowed.

(ii) The impugned order dated 28-04-2017, passed by the Tahsildar, Newasa in Rasta Case No.58/2016, so also the impugned order dated 07-08-2017, passed by the Sub-Divisional Officer, Ahmednagar in RTS Revision No.92/2017, are hereby quashed and set aside.

(iii) The matter is remanded back to the Tahsildar, who shall decide the same on the basis of evidence led

before him and after giving opportunity of hearing the parties, in accordance with law within a period of eight weeks from the date of receipt of writ of this order.

(iv) During the pendency of proceeding before the Tahsildar, the road which passes through Gat No.42 shall be used by the parties.

(v) The Tahsildar shall decide the Rasta Case No.58/2016 on its own merits, on the basis of evidence & record, without being influenced by the observations of this Court in the present order.

12. With these directions, Writ Petition is disposed of.

[NITIN B. SURYAWANSHI, J.]

Sameer