

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

WRIT PETITION NO.2974 OF 2014

1. Subhash S/o Baburao Chakrupe
Age: 56 years, Occu: Agri.,
R/o: Bhoyasamudraga, Tq. & Dist. Latur

2. Vithal S/o Baburao Chakrupe
Age: 51 years, Occu: Agri.
R/o: Bhoyasamudraga, Tq. & Dist. Latur

3. Shivram S/o Govind Chakrupe
Age: 67 years, Occu: Agri.
R/o: Bhoyasamudraga, Tq. & Dist. Latur

... Petitioners

Versus

1. Suresh S/o Shankarrao Ronge
Age: 58 years, Occu: Agri.
R/o: Bhoyasamudraga, Tq. & Dist. Latur

2. Narsing S/o Shankarrao Ronge
Age: 60 years, Occu: Agri.
R/o: Bhoyasamudraga, Tq. & Dist. Latur

3. The Additional Collector
Latur, Dist. Latur.

4. The Sub-Divisional Officer
Latur, Dist. Latur.

5. The Tahsildar
Latur Tq. & Dist. Latur.

... Respondents

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Mr. V. D. Gunale, Advocate for Petitioners
Mr. P. S. Shendurnikar, Advocate for Respondent No.1
Mrs. V. S. Choudhari, AGP for Respondents-State

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CORAM : NITIN B. SURYAWANSHI, J.

RESERVED ON : 11th January, 2022

PRONOUNCED ON: 31st January, 2022

JUDGMENT :

. **RULE.** Rule made returnable forthwith. Heard finally with the consent of the learned advocates for the respective parties.

2. This petition challenges the order dated 16/02/2006 passed by the Additional Collector, Latur in Appeal No.2005/ROR/A-137, and the judgment and order dated 17/11/2012 passed by the Additional Commissioner, Aurangabad Division, Aurangabad in Revision No.198/2006.

3. The petitioners are the owners of land gut Nos.58, 59, 60 & 61 and respondent Nos.1 & 2 are the owners of land Gut Nos.54, 55, 56 & 57 of village Bhoisamudraga Taluka & District Latur. On 30/10/1995, the petitioners filed an application before the Tahsildar, Latur under Section 143 of the Maharashtra Land Revenue Code, 1966 (for short “the MLR Code”) contending that, for approaching the lands of the petitioners, there is a cart way, which passes from the boundary of lands of the respondents. The same is obstructed by the respondents. The petitioners, therefore, sought removal of obstruction.

4. Pursuant to the application of the petitioners, the Tahsildar visited spot and has drawn a panchnama on 17/09/2000. The Tahsildar rejected the application holding that, there is a pathway from the respondent’s gut numbers. The gut numbers belong to the

respondents and people have only easementary way to use the pathway.

5. Being aggrieved by the said order of Tahsildar, the petitioners filed an appeal before the Sub-Divisional Officer, Latur. The appeal was allowed on the ground that as per panchanama dated 12/09/2002, the petitioners are accessing their lands from government gairan land and the panchnama dated 22/04/2003 does not bear the signature of the petitioners. Hence, the Sub-Divisional Officer, Latur remanded the matter back to the Tahsildar, Latur for fresh inquiry.

6. After the remand, again site inspection was carried out on 24/08/2004 in presence of the petitioners and respondents. The Tahsildar considered a village map of Bhiosamudraga. At the time of panchanama, the respondents have contended that, the petitioners should use the road from northern boundary towards west from Bhoisamudraga - Tandulwadi Shiv or Akkarwadi – Bhoisamudra Shiv. The Tahsildar, after considering the rival contentions and the records came to the conclusion that for approaching gut No.61 of the petitioners, the road available is a longer way, which passes from Bhiosamudraga village till Akkarwadi Shiv and from Akkarwadi - Shiv, the road is upto southern boundary of gut No.60. The Tahsildar, after considering both the alternate ways, has come to a conclusion that, both the roads are of a longer distance and inconvenient. Therefore, there is substance in the prayer of the petitioners that they should be given a cart way from the common boundary of gut Nos.55-56, 54 & 56 to access their gut Nos.58, 59, 60 & 61. Hence, Tahsildar

allowed the application filed by the petitioners by order dated 29/8/2005.

7. The respondents unsuccessfully challenged the order of Tahsildar by filing proceedings No.2005/ROR/A-72 before the Sub-Divisional Officer, Latur. The respondents, thereafter, challenged both the orders of Tahsildar and Sub-Divisional Officer by filing proceedings No. 2005/ROR/A-137 before the Additional Collector, Latur. The Additional Collector allowed the appeal by order dated 16/02/2006. The petitioners challenged the order of the Additional Collector by filing revision No.ROR/Rev/198/2006 before the Additional Commissioner, Aurangabad, who dismissed the revision. The petitioners are aggrieved by the orders passed by the Additional Collector, Latur and the Additional Commissioner, Aurangabad.

8. Heard the learned advocate for the petitioners and the learned advocate for the respondents.

9. The learned advocate for the petitioners assailed the impugned orders contending that, the road, which is taken into consideration by the Additional Collector, the petitioners have to cross a distance of 10 kilometers, whereas the road claimed by the petitioners has a distance of 300 meters only. The Additional Collector has failed to consider these aspects and erroneously allowed the appeal filed by the respondents. The Additional Commissioner has also failed to consider the case of the petitioners. He, therefore, submits that the writ petition deserves to be allowed by setting aside the impugned orders.

10. On the other hand, the learned advocate for the respondents submits that, Section 143 of the MLR Code can be invoked if there is no road available and if there is land-lock position. There is no power given to the Tahsildar to grant convenient way under Section 143 of the MLR Code. There are two alternate ways available to the petitioners. Therefore, the Tahsildar was not justified in allowing the prayer of the petitioners. He submits that, there is no illegality in the orders passed by the Additional Collector, Latur and the Additional Commissioner, Aurangabad. Hence, there is no substance in the petition and the petition deserves to be dismissed.

11. Heard the learned advocate for the petitioners and the learned advocate for the respondents, at length. Perused the record.

12. To appreciate the rival submissions, it is necessary to consider the relevant provision i.e. Section 143 of the MLR Code:

“Section 143 (1) The Tahsildar may inquire into and decide claims by person holding land in a survey number to a right of way over the boundaries of other survey numbers.

(2) In deciding such claims, the Tahsildar shall have regard to the need of cultivators for reasonable access to their fields.

(3) The Tahsildar’s decision under this section shall, subject to the provisions of sub-sections (4) and (5), be subject to appeal and revision in accordance with the provisions of this Code.

(4) Any person who is aggrieved by a decision of the Tahsildar under this section may, within a period of one year from the date of such decision, institute a civil suit to have it set aside or modified.

(5) Where a civil suit has been instituted under sub-section (4) against the Tahsildar’s decision, such decision shall not be subject to appeal or revision.”

From the above section, it is clear that the Tahsildar has a power to inquire into and to decide the claims to a right of way over the boundaries of other survey numbers and in deciding such claims, the Tahsildar shall take into consideration the needs of the cultivators for reasonable access to their fields.

13. In the case in hand, the Tahsildar while allowing the application of the petitioners has taken into consideration the fact that, the petitioners are from village Bhiosamudraga and both the alternate ways, which are suggested by the respondents, are of a longer distance and are inconvenient for the petitioners to access their respective fields. Hence, the Tahsildar was justified in granting the right of way to the petitioners from the common boundary of the respondent's gut numbers. While ordering so, the Tahsildar has taken into consideration the needs of the petitioners and he has come to a conclusion that, for reasonable access to the fields of the petitioners, both alternate ways suggested by the respondents are of a longer distance and inconvenient. The access from the common bandh of the respondents is required to be granted. The said order is passed by the Tahsildar having regard to the site inspection and the situation of the agricultural lands of the petitioners and respondents. Therefore, the Tahsildar was justified in passing the said order. The Sub-Divisional Officer was right in confirming the order passed by the Tahsildar.

14. The Additional Collector however set aside the order of the Tahsildar on the ground that since the petitioners are using the road available from gairan land gut No.64 till Samngaon Shiv since 2000, as the petitioners are using that road, then they are not entitled to

claim cart road from the others lands. While passing the impugned order, the Collector has failed to apply his mind to the aspect that the said road is a longer route and the petitioners have to cover longer distance to reach their fields. Therefore, the same is inconvenient to the petitioners. The Additional Commissioner without considering these aspects has erroneously proceeded to confirm the order passed by the Additional Collector, Latur.

15. Since the Additional Collector and the Additional Commissioner have failed to take into consideration the fact that, if the petitioners are required to access their fields from Shiv road of Samngaon & Akkarwadi villages, the petitioners have to cover longer distance and the said road is inconvenient. Merely because, the petitioners were using that road since long that doesn't mean that the petitioners are not entitled to claim road of a shorter distance for reasonable access to their fields. In that view of the matter, both the impugned orders cannot sustain and the same are liable to be quashed and set aside.

16. In the result, writ petition is allowed. The impugned orders dated 16/02/2006 passed by the Additional Collector, Latur in Appeal No.2005/ROR/A-137 and the order dated 17/11/2012 passed by the Additional Commissioner, Aurangabad Division, Aurangabad in Revision No.198/2006 are quashed and set aside.

17. Rule is made absolute in the above terms with no order as to costs.

(NITIN B. SURYAWANSHI, J.)