

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 12976 OF 2019

1. Baban S/o. Sampat Shinde
Age- 45 years, Occ- Agri,
2. Dattu S/o. Sampat Shinde
Age- 39 years, Occ- Agri,
3. Jalindar S/o Dattatray Khedkar
Age- 51 years, Occ- Agri,
4. Somnath S/o. Sukhdev Shinde
Age- 36 years, Occ- Agri,
All R/o. Pimpalgaon Pisa,
Tq. Shrigonda, Dist. Ahmednagar.

...PETITIONER
[Orig. Applicants]

VERSUS

1. Kondiba S/o. Maruti Shinde
Age- 61 years, Occ- Agri,
2. Sopan S/o. Maruti Shinde
Age- 56 years, Occ- Agri,
3. Baydbai Jaysing Jadhav
Age- 51 years, Occ- Agri,
4. Sarubai Maruti Shinde
Age- 75 years, Occ- Agri,
5. Kaushalya Rangnath Shinde
Age- 75 years, Occ- Agri,
All R/o. Pimpalgaon Pisa,
Tq. Shrigonda, Dist. Ahmednagar
6. The Ld. Tahsildar/Mamlatdar
Shrigonda, At- Shrigonda,
Dist. Ahmednagar.
7. The Ld. Deputy Collector, Land

...(Orig. Opponents)

Acquisition No. 13, Ahmednagar,
Tq. & Dist. Ahmednagar.

....RESPONDENTS

.....

Mr. Narendra B. Patekar Advocate for the petitioners.

Mr. Yuvraj Kakade h/f. Mr. N.V. Gaware for respondent No. 2.

Mr. P.N. Kutti, AGP for Respondent-State.

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[CORAM : NITIN B. SURYAWANSHI, J.]

RESERVED ON: 21st JULY, 2022

PRONOUNCED ON: 30th AUGUST, 2022

ORDER :

1. The challenge in this petition is to the order dated 16.09.2019 passed by Deputy Collector, thereby setting aside the order dated 26.07.2019 passed by Tahsildar in Vahivat Case No. 52/2018.

2. The petitioners filed proceeding under Section 5(2) of the Mamlatdar's Court Act, 1906, (for short 'said Act') against respondents No. 1 to 5, claiming a relief that respondents should not cause obstruction to the petitioners for repairing north-south road going from the boundary of gut No. 726, 724 and 725, which passes from western side of Gut No. 725 and 724 and from eastern boundary of Gut No. 726 from which a four wheeler can pass. The petitioners contended that this was customary road which was being used since generations. The owners of gut no. 724 and 725 have encroached on the said road due to which width of the road is reduced. There are pot holes on the said

road and since it has become narrow, petitioners are facing difficulties in using the said road. The petitioners and other agriculturists who were using that road approached gram panchayat for repairing of Malwadi-Maulai road. Repair work of said road was sanctioned by village panchayat. Thereafter, the respondents obstructed the repair work of said road. Hence, the petitioners filed said application. Tahsildar allowed the application filed by the petitioners and directed the respondents not to obstruct user of road by the petitioners.

3. Respondents challenged the order passed by Tahsildar by filing Revision No. 14/2019 before the Deputy Collector. Deputy Collector has allowed the revision and set aside the order passed by the Tahsildar. Hence, the present petition.

4. Heard the learned advocate for the petitioners, learned advocate for respondents and learned Assistant Government Pleader for State. Perused the record produced by learned Assistant Government Pleader.

5. Pursuant to the complaint filed by petitioners, Tahsildar conducted site inspection and prepared panchnama on 05.03.2017. At the time of site inspection, no obstruction to the

customary road was noticed, however, respondents claimed before the Tahsildar that customary road belongs to them and petitioners have no right to use that road. Since, during the site inspection no obstruction was noticed by the Tahsildar, there was no occasion for Tahsildar to allow the application filed by the petitioners thereby granting injunction to the respondents that they should not obstruct. According to the learned advocate for the respondents, said injunction order is without jurisdiction.

6. Sub Section 2 of Section 5 of the said Act empowers the Tahsildar to issue injunction, which reads thus:-

"5. (1) Every Mamlatdar shall preside over a Court, which shall be called a Mamlatdar's Court, and which shall, subject to the provisions of sections 6 and 26, have power, within such territorial limits as may from time to time be [fixed by the State Government.-

(a)-----

(b)-----

(2) The said Court shall also, subject to the same provisions, have power within the said limits, [where any impediment referred to in sub-section (1) is erected, or an attempt has been made to erect it, or], when any person is otherwise than by due course of law disturbed or obstructed, or when an attempt has been made so to disturb or obstruct any person, in the possession of any lands or premises used

for agriculture or grazing, or trees, or crops, or fisheries, or in the use of water from any well, tank, canal or water-course, whether natural or artificial, used for agricultural purposes, or in the use of roads or customary ways thereto, to issue an injunction to the person [erecting or who has attempted to erect such impediment, or] causing, or who has attempted to cause, such disturbance or obstruction, requiring him to refrain [from erecting or attempting to erect any such impediment or], from causing or attempting to cause any further such disturbance or obstruction."

In view of sub section 2 of section 5 of said Act, the order passed by the Tahsildar cannot be said to be without jurisdiction.

7. It is also clear from the affidavit in reply filed by the Tahsildar that gram panchayat had prepared estimate to carry out repairing work of Malwadi-Maulai road and accordingly 50% repair work was completed. However, same was stopped on the objection raised by respondent No. 1. The Deputy Collector on the other hand set aside the order of the Tahsildar on the ground that there was no obstruction on the customary road and he could not have passed order under sub section 2 of section 5. The Deputy Collector has recorded the said finding by ignoring

provisions of sub section 2 of section 5. The impugned order is therefore vitiated for non application of mind on the part of respondent No. 7.

8. Record indicates that the respondents have caused obstruction to the construction/repair of road. It also supports the case of the petitioners that respondents have obstructed the petitioners for using customary road.

9. For the aforesaid reasons, the impugned order passed by respondent No. 7 cannot be sustained and same is liable to be quashed and set aside.

10. In the result, writ petition is allowed in terms of prayer clause 'B'.

11. The impugned order dated 16.09.2019 passed by Deputy Collector, Ahmednagar, in Ra.Ma.Kra. M.C.A. 23/14/19, is hereby quashed and set aside.

[NITIN B. SURYAWANSHI, J.]