

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 13961 OF 2021

Keru s/o Gajaba Koradkar

...Petitioner

Versus

The State of Maharashtra & Others

...Respondents

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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. 9 to 11 and 13 to 17.

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[CORAM : NITIN B. SURYAWANSHI, J.]

RESERVED ON: 29th AUGUST, 2022

PRONOUNCED ON: 10th NOVEMBER, 2022

ORDER :

1. This petition filed under Article 226 and 227 of the Constitution of India, challenges the order dated 22.10.2021 passed by Sub Divisional Officer, Shrigonda/respondent No. 1, in Revision Application No. 65/2021.

2. Respondent No. 13 filed application under section 5(2) of the Mamlatdar Court's Act, 1906 (for short 'said Act'), against petitioner and 15 others, including respondents No. 4 to 12 and 14 to 17, claiming to be owner of gut nos. 30 to 38, situated at village Tandali Dudhala, Taluka- Shrigonda, District-

Ahmednagar and he cannot access his land, therefore, he be given right of way from fut no. 41 owned by the petitioner and the respondents. The application filed by the respondent No. 13 was allowed.

3. Said decision was challenged in revision before the Sub Divisional Officer. The Sub Divisional Officer dismissed the said revision. Hence, the present petition.

4. I have duly considered the submission of learned advocate for the petitioner, learned advocate for the respondents and learned Assistant Government Pleader. Perused the grounds in the writ petition, documents filed along with petition and reply affidavit filed by the respondents.

5. Record indicates that site inspection panchnama was to be conducted on 23.07.2015. At that time, respondents, before the Tahsildar obstructed the panchnama. They claimed that they will not allow respondent No. 13 to use the way passing from their field. They refused to stay till the site inspection panchnama is conducted. Thereafter, panchnama was conducted. During the panchnama, it was noticed that

respondent No. 13 has no other way to use except the old customary way. Therefore, Tahsildar has directed respondent No. 13 to use east west customary way towards gut No. 41. Said order is confirmed by the Sub Divisional Officer in the revision.

6. It appears from the record that the impugned orders are passed after conducting site inspection, by drawing panchnama and on the basis of actual position noticed by the Tahsildar on the site. It further appears from the record that the land bearing gut no. 30, 32 and 33 were earlier owned by Bhos family members and they are purchased by the petitioner and his wife from Bhos family. There was common road for land gut nos. 30 to 38 which connected the said land with Takali Lonar Tandali Dumala shiv road and was passing from land gut no. 41 belonging to the petitioner. The same is cart road and was being used for generations by the owners of gut nos. 30 to 38 to approach Takali Lonar Tandali Dumala shiv road.

7. There appears substance in the contention of the respondents that with a view to compel respondent No. 13 to sale gut No. 30 and gut no. 32 and 33 belonging to the wife of the petitioner, the petitioner obstructed access road connecting

land of Respondent No. 13 to shiv road. Therefore, respondent No. 13 rightly filed Vahivat Case No. 70/2014.

8. It further appears from the record that the petitioner challenged the order passed by the Tahsildar in Vahivat Case No. 70/2014 by filing Writ Petition No. 12286/2019, after challenging the said order in appeal before the Sub Divisional Officer.

9. The petitioner also filed Regular Civil Suit No. 55/2015 challenging the order of Vahivat Case No. 70/2014. Interim stay application Exhibit-5 filed in the suit was rejected by the Trial Court and the Appellant Court has confirmed the said order. Hence, the petitioner filed Writ Petition No. 13688 of 2018. In writ petition directions were issued to the Sub Divisional Officer to decide appeal No. 18/2020. However, the petitioner failed to prosecute said appeal and it was dismissed for non prosecution by order dated 18.11.2020.

10. It is therefore, clear that the petitioner has abused the process of Court by fling various proceedings and suppressing filing of the same before this Court, revisional authority and the Civil Court. The impugned orders are passed

on merits and on the basis of record. The petitioner is not entitled for any relief in the extraordinary writ jurisdiction, for his suppression of material facts in earlier rounds of litigation. There is no merit in the petition. The writ petition is therefore dismissed.

[NITIN B. SURYAWANSHI, J.]