

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

WRIT PETITION NO.14153 OF 2021

1. Ramesh Narayan Mande,
Age: 42 years, Occu: Agril,
2. Adhikabai Narayan Mande,
Age: 62 Years, Occu: Agril,
3. Anil Narayan Mande,
Age: 40 Years, Occu: Agril,
4. Reshma Anil Mande,
Age: 36 Years, Occu: Agril,
All R/o Madhewadgaon,
Tq. Shrigonda, Dist. Ahmednagar. ... Petitioners

Versus

1. The Sub Divisional Officer,
Shrigonda-Parner Division,
At Ahmednagar,
Tq. & Dist. Ahmednagar.
2. The Tahsildar, Shrigonda,
Tq. Shrigonda, Dist. Ahmednagar.
3. Shri. Shankar Sopan Mande,
Age: 75 Years, Occu: Agril,
4. Nilkanth Khanderao Wable,
Age: 60 Years, Occu: Agril,
R/o Mhatar Pimpri,
Tq. Shrigonda, Dist. Ahmednagar.
5. Sanjay Trimbak Mande,
Age: 47 Years, Occu: Agril,
6. Shalan Sanjay Mande,
Age: 38 Years, Occu: Agril,
7. Anita Santosh Mande,
Age: 37 Years, Occu: Agril,
8. Vanmala Abasaheb Mande,
Age: 45 Years, Occu: Agril,

Respondent No.3, 5 to 8

All R/o Madhewadgaon,

Tq. Shrigonda, Dist. Ahmednagar

... Respondents

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Advocate for Petitioners : Mr. Sanket Kulkarni h/f Mr. D. B. Rode

AGP for Respondents – State : Mr. S. N. Kendre

Advocate for Respondent Nos. 3 & 5 : Mr. Rahul Tambe

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CORAM : NITIN B. SURYAWANSHI, J.

RESERVED ON : 01st AUGUST, 2022

PRONOUNCED ON : 03rd AUGUST, 2022

ORDER :

1. The challenge in this petition is to the order dated 05/12/2018 passed by Tahsildar, Shrigonda, in Rasta Case No.16/2016, which is confirmed by Sub Divisional Officer, Shrigonda-Parner Division, Ahmednagar, in Revision Application No.220/2019.

2. Respondent Nos. 3, 4 and 5 filed rasta case before Tahsildar, Shrigonda against petitioner No.1 and respondent Nos. 6, 7 and 8, under Section 5(2) of the Mamlatdars' Courts Act, 1906, claiming injunction that respondents named therein should not obstruct them from using customary way passing from the boundaries of land Gut Nos.523 and 531. Further relief is claimed that, in case the said customary way is damaged, the defendants be directed to restore the same.

3. Tahsildar, after conducting site inspection panchanama and hearing the parties, allowed the application and directed the defendants and owner of land Gut No.527 not to obstruct plaintiffs from using said customary way. The said order is confirmed in revision by the Sub Divisional Officer. Hence, the present petition.

4. After hearing the learned advocates for the respective parties and learned Assistant Government Pleader for respondents – State and after going through the record made available by the learned Assistant Government Pleader, this Court is of the considered view that both the impugned orders cannot be sustained.

5. Tahsildar has passed the impugned order beyond the prayers made in the plaint filed by respondent Nos. 3, 4 and 5. Admittedly, though direction is given against the owner of land Gut No.527 namely Adhikabai Narayan Mande (petitioner No.2 herein), she was not heard by the Tahsildar. Though this fact was brought to the notice of Sub Divisional Officer, the same was ignored while passing the impugned order. In the result, following order :-

(I) Writ petition is allowed.

(II) Impugned order dated 05/12/2018 passed by Tahsildar, Shrigonda, in Rasta Case No.16/2016 and the order dated 18/08/2020 passed by Sub

Divisional Officer, Shrigonda-Parner Division, Ahmednagar, in Revision Application No.220/2019, are hereby quashed and set aside.

- (III) Rasta Case No.16/2016 is remanded back to Tahsildar, Shrigonda, who shall, after hearing all the concerned parties including owner of land Gut No.527, pass appropriate order in accordance with law.
- (IV) All the contentions of the respective parties are kept open.
- (V) Tahsildar, Shrigonda, shall complete the hearing and deliver judgment within a period of four weeks from the date of first appearance of the parties.
- (VI) Parties are directed to appear before the Tahsildar, Shrigonda, on 10/08/2022. Notice, therefore, is dispensed with.

(NITIN B. SURYAWANSHI, J.)