

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 1322 OF 2021

PETITIONERS :-

1. Madhukar S/o Amruta Ekade, aged about 66 years, Occupation : Agriculturist,
2. Amruta S/o Dagadu Ekade, aged about 93 years, Occupation : Agriculturist,

Both the petitioners are R/o at Village Pokhri, Post Sav, Tah.and Dist. Buldhana.

...VERSUS...

RESPONDENTS :-

1. The Deputy Collector and the Sub-Divisional Officer, Buldhana.
2. The Naib-Tahsildar (Revenue), Buldhana, Tah. and Dist. Buldhana/Court of Mamlatdar.
3. The Circle Officer, Mouza Sakhli (Bk.), Tah. and Dist. Buldhana.
4. Vijay S/o Tulshiram Ekade, aged about 39 years, Occupation : Agriculturist, R/o at Village Pokhri, Post Sav, Tah. and Dist. Buldhana.
5. Sahebrao S/o Pandurang Aadve, aged about 59 years, Occupation :

Agriculturist, R/o at village Malvihir, Tah. and District Buldhana.

6. Nikhilesh S/o Sampatrao Jadhav, aged about 51 years, Occupation : Agriculturist, R/o. Mallikarjun Apartment, Kyawal Complex, Circular Road, Buldhana, Tah. and District Buldhana.
7. Jyoti Devendra Kayastha, aged about 41 years, Occupation : Agriculturist/ Household, R/o. Janta Chowk, Police Ground Road, Buldhana, Tah. and Dist. Buldhana.

Mr. N.B.Kalwaghe, counsel for the petitioners.
Mr.K.L.Dharmadhikari, AGP for respondent Nos.1 to 3.
Ms Deepali Sapkal, counsel for respondent Nos.4 to 6.
None for respondent No.7.

CORAM : MANISH PITALE, J.

DATE : 21.04.2022.

ORAL JUDGMENT

Heard.

2. **Rule.** Rule made returnable forthwith. Though respondent No.7 is served and none appears on his behalf, the

writ petition is heard finally with the consent of the learned counsel appearing for the rival parties.

3. By this writ petition, the petitioners have challenged order dated 15/02/2021, passed by respondent No.1-Deputy Collector and the Sub-Divisional Officer, whereby revision application filed by respondent Nos.4 to 6 was allowed and an order passed by respondent No.2 under the provisions of the Mamlatdar's Courts Act, 1906 (hereinafter referred to as "Act of 1906"), was set aside. As a consequence, the petitioners were directed to remove alleged obstruction from the way available from their fields for access to the agricultural fields of respondent Nos.4 to 6.

4. Mr. Kalwaghe, learned counsel appearing for the petitioners, submitted that the impugned order passed by respondent No.1-Revisional Authority was unsustainable for more reasons than one. According to him, the aforesaid respondent failed to take into account the fact that on the same cause of action, an earlier proceeding in respect of the same alleged access

way under the provisions of the Act of 1906 was initiated and it had terminated in favour of the petitioners. This aspect was specifically brought to the notice of respondent No.1, but in the impugned order, despite taking note of the said contention, there was no discussion on the same and respondent No.1 proceeded to allow the revision application of respondent Nos.4 to 6.

5. It was then submitted that even on merits, there was no substance in the contentions raised on behalf of respondent Nos.4 to 6 as the material that came on record in the earlier round of litigation as well as the present round, did not support the assertions made on behalf of respondent Nos.4 to 6. Reliance was placed on section 26(b) of the Act of 1906, to contend that the order passed by the Mamlatdar i.e. respondent No.2 even in the second round in favour of the petitioners could not have been interfered with by respondent No.1 in exercise of the revisional jurisdiction. It was submitted that, in any case, respondent Nos.4 to 6 could approach the Civil Court despite findings rendered against them by the Authorities under the provisions of the Act of 1906 and that therefore, the said respondents were not

remediless. Reliance was placed on the judgment of this Court in the case of **Sunil Biharilal Agrawal v. State of Maharashtra and others**, reported in **2021 (2) Mh.L.J. 166**.

6. On the other hand, Ms Deepali Sapkal, learned counsel appearing for the contesting respondent Nos.4 to 6, submitted that the earlier round concerning the said access way was initiated by different persons, who had nothing to do with the present round of litigation, except one individual i.e. Kashinath. It was submitted that even if the earlier round of litigation was taken into consideration, the order passed in the said round by the Mamlatdar having attained finality would not create any impediment for respondent Nos.4 to 6 to seek redressal of their grievance on merits. In any case, the said respondents were not party to the earlier round.

7. Insofar as the merits of the matter were concerned, it was submitted that the inspection report available before the Mamlatdar in the second round, read with the map that was placed on record would show that a way indeed existed from the

agricultural fields of the petitioners, up to the field of respondent No.7, who was original non-applicant No.3 before the Mamlatdar. The said respondent No.7 had specifically conceded to existence of access way to the agricultural fields of respondent Nos.4 to 6 through the fields of the petitioners and the said respondent No.7. This aspect was properly appreciated by respondent No.1, while allowing the revision application and therefore, even on merits, no interference is warranted in the impugned order. The learned counsel appearing for respondent Nos.4 to 6 relied upon judgment of this Court in the case of **Shrikrishna Sheshrao Dane and anr. v. Vasant Ramrao Tayade and anr.**, reported in 2018 (1) ALL MR 397.

8. Mr. K.L.Dharmadhikari, learned Assistant Government Pleader appeared on behalf of respondent Nos.1 to 3.

9. In this case, respondent No.1 as the Revisional Authority has reversed the order of respondent No.2, who was exercising powers of the Mamlatdar under the Act of 1906. It needs to be examined whether there was sufficient material on

record to justify interference with the order of respondent No.2, to hold that the application filed by respondent Nos.4 to 6 asserting existence of a cart way could have been granted. It is significant that the application filed on behalf of the said respondents, along with Kashinath, specifically prayed for a direction to the petitioners to remove obstruction from the access way, which existed for transport of bullock cart, thereby indicating that according to the said respondents and Kashinath there indeed existed a cart way for access to the agricultural fields of the said respondents, through the fields belonging to the petitioners.

10. Perusal of the material placed on record shows that in the year 2013, the said Kashinath along with other persons had raised an identical grievance with regard to the said alleged cart way available through the fields of the petitioners in Gat Nos.150 and 153. In the said proceedings initiated in the year 2013, access through the field of the petitioners was sought for fields located in Gat Nos.11 to 23. In the said first round of litigation, wherein the said Kashinath was a common applicant, as compared to the second round initiated in the year 2020, the Naib Tahsildar as the

Mamlatdar had taken into consideration the spot inspection as well as the material on record to give a finding that no case of existence of such cart way for access through the fields of the petitioners was made out and accordingly, the said application was dismissed by an order dated 03/02/2014. It appears that for a long period of time, the said order was not challenged, but ultimately in the years 2020-21, a revision application was filed before the Sub-Divisional Officer, which admittedly stood dismissed by order dated 15/09/2021. In other words, the order dated 03/02/2014, attained finality.

11. When the present round of litigation was initiated in the year 2020, the petitioners did bring this aspect to the notice of respondent No.2 i.e. the Mamlatdar. Perusal of the order passed by the Mamlatdar in the second round of litigation initiated in the year 2020 shows that by order dated 06/11/2020, respondent No.2-Naib Tahsildar rejected the application filed by respondent Nos.4 to 6 and the said Kashinath, *inter alia*, on the ground in the earlier round of litigation initiated in the year 2013, similar contentions had been rejected. Nonetheless, respondent No.2-

Naib Tahsildar did consider the contentions of respondent Nos.4 to 6 and the said Kashinath on merits. It was found that the material that had come on record in the form of spot inspection and the map indeed support the claims made on behalf of respondent Nos.4 to 6 and the said Kashinath. As noted above, respondent No.1 while exercising revisional jurisdiction interfered with the said order and set aside the order of respondent No.2-Naib Tahsildar, holding in favour of respondent Nos.4 to 6. It appears that the said Kashinath in the meanwhile expired, but his legal representatives were not brought on record.

12. Be that as it may, this Court has considered the material on record. It is found that the said Kashinath was a party in both the rounds of litigation. The order passed by the Naib Tahsildar in the first round on 03/02/2014, concerned claim of the applicants therein for access to fields in Gat Nos.11 to 23 from the fields of the petitioners. The said claim was rejected, which admittedly, attained finality. In the second round initiated in the year 2020, wherein the same Kashinath was a common applicant, it was claimed that access way/cart way was available to the fields

of the petitioners in Gat Nos.19, 21 and 23.

13. It is significant that respondent Nos.4 to 6 in their statements given in the second round of litigation before respondent No.2, stated that either they had purchased the land belonging to them from the said Kashinath or his father and in respect of one of the said respondents, admittedly he happened to be the brother of Kashinath. This indicates that respondent Nos.4 to 6 claimed rights in the concerned agricultural fields through Kashinath and his father as their predecessor. In this context, when section 26(b) of the Act of 1906 is perused, it indicates that no suit under the provisions of the said Act would lie where the question of removal of impediment or disturbance of possession has been subject matter of previous proceedings to which the plaintiff or his predecessor in interest has been a party. In the present case, there is no dispute about the fact that the said Kashinath was indeed a party to the first round of litigation undertaken in the year 2013 and that the said Kashinath could be said to be a predecessor in interest of respondent Nos.4 to 6. It is an admitted position that the same Kashinath was party in the

second round initiated in the year 2020. In the face of these admitted facts, the bar under section 26(b) of the Act of 1906 would apply.

14. The respondent No.2 in the present round initiated in the year 2020 did take into of the said factor and held against respondent Nos.4 to 6. This aspect was brought to the notice of respondent No.1 as the Revisional Authority. The impugned order shows that the said contention was noted, but there is no discussion on the same and if the reasoning of respondent No.1 is perused, while the said Authority has held in favour of respondent Nos.4 to 6, the aforesaid aspect is not even referred to or dealt with. This Court is of the opinion that in view of the admitted position that the order passed by the Naib Tahsildar in the first round of litigation has attained finality, the impugned order deserves to be set aside only on that ground.

15. Yet, this Court has considered it proper to consider the merits of the matter because the reasoning of the Revisional Authority i.e. respondent No.1 is based on certain spot inspection

reports that had come on record. Perusal of the spot inspection reports that came on record in both rounds of litigation initiated under the Act of 1906 would show the existence of a foot way through the fields belonging to the petitioners up to the field in Gat No.22 belonging to respondent No.7. In any case, there is no reference to an existing cart way, which was being used by respondent Nos.4 to 6 or the said Kashinath for a long period of time, which was allegedly obstructed by the petitioners. It is the case of the petitioners that the foot way in question is for their own private use in their fields located in Gat No.150 and 153. It is submitted that even though respondent No.7 in her written statement in the second round of litigation before respondent No.2 did claim that the said foot way led to access to fields of respondent Nos.4 to 6 in Gat Nos.19, 21 and 23, the map that came on record even in the second round demonstrated existence of the foot way from the fields of the petitioners in Gat No.150 and 153, only up to the field of respondent No.7 in Gat No.22. Thus, the material on record indicates the existence of foot way from the fields in Gat Nos.150 and 153 belonging to the

petitioners to the field belonging to respondent No.7 in Gat No.22.

16. By no stretch of interpretation of the material available on record can it be said that respondent Nos.4 to 6 could successfully demonstrate the existence of cart way through the fields of the petitioners and that of respondent No.7 to their fields in Gat Nos.19, 21 and 23. Thus, the alleged admission on the part of respondent No.7 before respondent No.2-Naib Tahsildar in the second round of litigation was inconsequential. Yet, in the impugned order, respondent No.1 relied upon such alleged admission to hold in favour of respondent Nos.4 to 6. This Court is of the opinion that even on merits, the findings rendered by respondent No.1 are unsustainable, quite apart from the fact that when findings regarding the said access way had attained finality in the first round, the said factor ought to have been taken into consideration by respondent No.1 while considering the revision application filed by respondent Nos.4 to 6. On both counts, the impugned order is found to be unsustainable.

17. The learned counsel for the petitioners is justified in relying upon judgment of this Court in the case of **Sunil Biharilal Agrawal v. State of Maharashtra and others** (*supra*), wherein it has been indicated that despite the culmination of proceedings under the provisions of the Act of 1906, a party which feels aggrieved can certainly knock the door of the Civil Court as per the scheme contemplated under the said Act.

18. Insofar as the reliance placed on behalf of respondent Nos.4 to 6 on the judgment of this Court in the case of **Shrikrishna Sheshrao Dane and anr. V Vasant Ramrao Tayade and anr.** (*supra*), it is found that in the said case, on facts, a conclusion was reached that there indeed existed a cart way and therefore, relief was granted to the applicants, who had approached the Mamlatdar. In the present case, as noted above, even on merits, it is found that with the available material on record, respondent Nos.4 to 6 and the common applicant Kashinath failed to demonstrate existence of a cart way, which was being regularly used through the fields of the petitioners to access the fields in Gat Nos.19, 21 and 23. Thus, reliance placed on the said judgment on behalf of respondent

Nos.4 to 6 can be of no avail.

19. In view of the above, it is found that the present writ petition deserves to be allowed. Accordingly, the writ petition is allowed. The impugned order passed by respondent No.1 is quashed and set aside and the order passed by respondent No.2-Naib Tahsildar, as the Mamlatdar, is restored.

20. Rule is made absolute in above terms. No costs.

JUDGE