

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

WRIT PETITION NO. 3360 OF 2021

Narendra S/o Basantrao Deshmukh & another -- Petitioners

Vs.

State of Maharashtra and others -- Respondents

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mrs. S.W. Deshpande, Advocate for Petitioners
Ms. T.H. Khan, AGP for Respondent No.1
Mr. P.J. Mehta, Advocate for Respondent Nos.2(a) to 5

CORAM : MANISH PITALE, J.

DATE : 24th JUNE, 2022

By this petition, concurrent orders passed by the Sub-Divisional Officer and Tahsildar are challenged. The grievance of the petitioners is that access way had been granted to respondent Nos.2 to 5 from the field of the petitioners without appreciating the spot inspection report and the village map in the correct perspective.

2. The respondent Nos.2 to 5 claimed through their counsel that the true purport of the impugned order is, existence of a regular cart way from the northern side of the field of the petitioners, west to east for accessing the fields of the said respondents.

3. On the other hand, the petitioners through their learned counsel vehemently submitted that a perusal of the village map and the spot inspection report dated 25/11/2019, would show that the cart way was not visible although a foot-way was found to be existing on the southern side of the field of the petitioners from west to east. On this basis, it was submitted that there was no material for the Tahsildar and the Sub-Divisional Officer to grant the access way to the respondent Nos.2 to 5. In any case, it was submitted that a perusal of the orders did not show that a cart way was granted to the said respondents.

4. This Court is convinced that the authorities below have failed to appreciate the village map as well as the ground reality in the correct perspective and that, therefore, the matter deserves to be remanded to the Tahsildar for consideration afresh. It would be appropriate that a proper spot inspection is carried out in the presence of the parties to verify the claim made by the respondent Nos.2 to 5 as regards the existence of the access way claimed on their behalf.

5. In the meanwhile, since *monsoon* season has arrived and agricultural activities would be undertaken, the respondents Nos.2 to 5 can be granted limited permission to use the foot way on the southern side of the field of the petitioners from west to east in terms of the observations about the existence of foot way made in the spot inspection report dated 25/11/2019.

6. In view of the above, the writ petition is partly allowed. The impugned orders are quashed and set aside and the matter is remanded to the respondent – Tahsildar for consideration afresh.

7. The respondent – Tahsildar is directed to decide the application filed by the respondent Nos.2 to 5 expeditiously. During pendency of the application before the Tahsildar, the respondent Nos.2 to 5 are permitted to use foot-way from the southern side of the field of the petitioners from west to east to access their agricultural fields.

8. Parties to appear before the Tahsildar on 04/07/2022.

9. This Court has not commented upon the merits of the matter and all questions on merits are kept open.

10. The writ petition is disposed of.

JUDGE