

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

WRIT PETITION NO.3875/2021

Anil Dnyandeorao Chede
...Versus...
Ashok Ramrao Yevkar and others

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

Court's or Judge's orders

Shri Vipul B. Bhise, Advocate for petitioner
Shri N.J. Patil, Advocate for respondent nos.1 to 3
Mrs. Shamsi Haider, AGP for respondent nos.4 and 5

CORAM : AVINASH G. GHAROTE, J.

DATE : 25/07/2022

1. Heard Shri Vipul B. Bhise, learned Counsel for the petitioner, Shri N.J. Patil, learned Counsel for the respondent nos.1 to 3 and Mrs. Shamsi Haider, learned Assistant Government Pleader for the respondent nos.4 and 5/State.
2. The present petition challenges the order dated 12/11/2018 (pg.44) passed by the learned Mamlatdar under Section 5 of the Mamlatdars' Courts Act (for short, "the Act of 1906" hereinafter) and the order dated 02/07/2021 (pg.52) by the learned Sub Divisional Officer in revision.
3. It is the contention of Shri Bhise, learned Counsel for the petitioner that by the impugned orders, what has been

granted, is a new road, which is not permissible under Section 5 of the Act of 1906. He invites my attention to both the orders, which according to him, recognize the position that there is a road in existence from Bordi to Rahanapur, which runs through the lands of Survey Nos.117, 126, 127 and 130, which was being used by the respondent nos.1 to 3, as against which, a new road has been granted from the southern boundary of Survey Nos.117, 118 and 119 and the eastern boundary of Survey No.119 to approach Survey No.124. He submits that such a course of action is not permissible under the provisions of Section 5 of the Act of 1906.

4. Shri Patil, learned Counsel for the respondent nos.1 to 3 vehemently contends that there is no grant of a new road but the road was already in existence and therefore what has been directed is merely removing of an obstruction in the use of the road, which was clearly permissible under Section 5 of the Act of 1906.

5. A perusal of the order dated 12/11/2018 passed by the learned Mamlatdar would indicate the existence of the road from Bordi to Rahanapur, as indicated above. It does not indicate the existence of the road adjacent to the southern boundary of Survey Nos.117, 118 and 119. What is being observed, is that for the sake of convenience since use of the land adjacent to the southern boundary of Survey Nos.117,

118 and 119, would be convenient and would be nearer, a new road is being created for the respondent nos.1 to 3. This, in my considered opinion, is not permissible under the provisions of Section 5 of the Act of 1906, which only permits the learned Mamlatdar, to recognize the existence of a road and remove obstruction in case it is so created. The provisions of Section 5 of the Act of 1906 do not permit the Mamlatdar to grant a new road altogether. The learned Sub Divisional Officer, in the impugned order relies upon the report of the Talathi and the village map to hold that there was a road in existence adjacent to the southern boundary of Survey Nos.117, 118 and 119, however, a perusal of the Talathi report dated 16/07/2018 (pg.36) does not indicate this to be the position, on the contrary, the report categorically records that as on the date of the report, there was no road seen to be available from the southern boundary of Survey No.117 so as to approach Survey Nos.118, 119 and 124. The village map at Annexure-B (pg.23) also does not indicate the existence of any such road. That being the position, merely because the sale-deed in favour of the respondent no.2 indicates a road to be in existence adjacent to the southern boundary of Survey No.117, that by itself, without anything else would not indicate the existence of the road, specifically so when the village map does not so indicate. That being the position, in my considered opinion, both the orders travel beyond the jurisdiction conferred by Section 5 of the Act of 1906 in

creating a shorter way for the respondent nos.1 to 3.

6. In view of the above discussion, the impugned orders are hereby quashed and set aside and the application filed by the respondent no.1 to 3 is hereby dismissed. The writ petition is hereby allowed in the above terms. No order as to costs.

(AVINASH G. GHAROTE, J.)

Wadkar