

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

WRIT PETITION NO. 3163 OF 2020

Ramdas Punjaji Shinde and anr.

Vs.

Deputy Collector, Sub-Division Mehkar, Dist. Buldhana and Ors.

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

Court's or Judge's Orders.

Mr. R.S. Gahilot, Advocate for petitioners.
Ms. T.H. Khan, AGP for respondent Nos.1 & 2.
Mr. Atharva S. Manohar, Advocate for respondent Nos.3
to 5.

CORAM : MANISH PITALE J.

DATE : 08.07.2022.

By this writ petition, the petitioner has challenged order dated 12.11.2020 passed by the Sub-Divisional Officer (SDO), whereby revision application filed by the respondent Nos.3 to 5 under the provisions of Mamlatdar Courts Act, 1906, was allowed and order passed by the Talshildar was set aside.

2. The respondent Nos.3 to 5 had invoked the provisions of the said Act and moved the Mamlatdar (Tahsildar) against the petitioners, claiming that an existing access way to their agricultural field was blocked by the petitioners and

that therefore, appropriate orders were necessary for reopening of such existing access way.

3. The Tahsildar undertook spot inspection, prepared a report and a map. After giving opportunity to the parties to examine witnesses and upon perusal of the documentary material on record, including sale-deeds executed in favour of respondent Nos.3 to 5, the Tahsildar found that the said respondents had failed to make out a case under the provisions of the said Act. On this basis, the Tahsildar, by a detailed order, rejected the application filed by the said respondents.

4. Aggrieved by the same, the said respondents invoked revisional jurisdiction of the SDO. After considering the material on record, the SDO rendered findings in favour of respondent Nos.3 to 5, thereby setting aside the order of Tahsildar and effectively allowing the prayers made on behalf of the said respondents.

5. The petitioners approached this Court and on the 03.12.2020, notice was issued in the petition and interim stay was granted. As a consequence, the order of SDO did not come into operation.

6. Mr. Gahilot, learned counsel appearing for the petitioners submitted that the SDO committed a grave error in interfering with the well reasoned order of the Tahsildar. According to him, the findings rendered by the SDO were based on complete misreading of the spot inspection report and the map that came on record. It was further submitted that sale-deeds executed in favour of respondent Nos.3 to 5, were mis-interpreted by the SDO to render findings in favour of the said respondents. It was submitted that vendors of the said respondents unilaterally could not have given access way to fields purchased by the said respondents, from the agricultural fields of the petitioners.

7. According to the learned counsel for the petitioners, the oral and documentary evidence on record did not support the contention of the said respondents about existence of an access way through the fields of the petitioners and that therefore, the SDO erred in allowing the revision application. It was further submitted that even the Tahsildar had taken note of the fact that from the south of the fields of the petitioners, they had indeed an access way available to the main road and that

the real problem for the respondent No.3 to 5 appeared to be concerning small portion on the southern side, which they could sort out, in accordance with the provisions of law. But, the order of the Tahsildar clearly did not deserve interference.

8. On the other hand, Mr. Manohar, learned counsel appearing for the contesting respondent Nos.3 to 5, submitted that a perusal of the sale-deeds executed in favour of the said respondents would show that an access way was clearly indicated in the said documents. According to the learned counsel for the said respondents, even the spot panchnama report indicated that the petitioner had started cultivation on their fields, which according to respondent Nos.3 to 5 had resulted in obstruction to the access way that was available. It was further submitted that if the contentions of the petitioners were to be accepted, the respondent Nos.3 to 5 would not be able to access their fields and therefore, no interference is warranted in the impugned orders passed by the SDO.

9. Heard the learned counsel for the parties and perused the material on record.

10. The pre-condition for exercising jurisdiction under Section 5 of the said Act is a pre-existing access way which has been blocked within six months of an application being filed under Section 5 of the said Act by the aggrieved persons. Therefore, the burden is upon the person who invoked Section 5 of the said Act to prove that there was indeed a pre-existing access way, which has been blocked giving rise to cause of action.

11. In the present case, the respondent Nos.3 to 5 approached the Tahsildar, claiming that an existing way to their field had been blocked by the petitioners and that therefore, appropriate directions ought to be issued against them. Reliance was placed on documentary and oral evidence to claim that such access way was required to be made available by the removal of obstruction.

12. The Tahsildar put the petitioners to notice and carried out spot inspection, preparing a spot inspection report and a map. A perusal of the report shows that the Tahsildar traversed the fields of the petitioners in Gut Nos.244, 243 and 241. Thereupon, he moved to Gut No.240 and turned towards the south to reach the fields of respondent

Nos.3 to 5 and moved back in the direction towards the main road from the south of the fields of the petitioners. The report clearly records that there was cultivation in the fields of the petitioners in the aforesaid Gut Nos.244, 243 and 241. It was also noticed that towards the south of the fields of the petitioners an access way appeared to have been made by use of JCB machine. This portion has been highlighted on behalf of respondent Nos.3 to 5 to contend that the attempt on the part of the petitioners to create an access way on the south indicated that their claim about existence of an access way was proved. Reliance was also placed on contents of sale-deeds executed in favour of the said respondents.

13. This Court is of the opinion that the Tahsildar appreciated the oral and documentary material and evidence in a correct manner to conclude that respondent Nos.3 to 5 had failed to demonstrate a pre-existing way, which was blocked by the petitioners. The spot inspection report and the map do not indicate any such contingency. The reliance placed on the sale-deeds on behalf of the respondent Nos.3 to 5 is meaningless because their vendor could certainly not have granted them access

way through the fields of the petitioners, who were obviously not party to such documents. Such unilateral declaration of existence of access way could not be the basis to claim that there indeed was a pre-existing access way available to respondent Nos.3 to 5. Therefore, the findings rendered by the Tahsildar were based on correct interpretation of the material on record.

14. On the other hand, the SDO appears to have reached perverse findings while reversing the findings of the Tahsildar. The findings rendered by the SDO that Tahsildar had ignored the map on record is wholly unsustainable because in the spot inspection report the Tahsildar had described in detail as to what was found when the spot inspection report was prepared. The reliance placed on the sale-deeds was also misplaced and merely because the petitioners appeared to have made available an access way towards the south, could not be a factor to be held against them.

15. In view of the above, this Court is of the opinion that the impugned order passed by the SDO is wholly unsustainable and deserves to be set aside.

16. Accordingly, the writ petition is allowed. The impugned order is set aside and that of the order of Tahsildar is restored.

17. Nonetheless, if the respondent Nos.3 to 5 are indeed facing difficulty in accessing their field for the reason that their vendor is refusing to give them access through Gut No.240 on the southern side, respondent Nos.3 to 5 would be at liberty to invoke Section 143 of the Maharashtra Land Revenue Code, 1966, before the competent authority with a prayer for grant of access way. If such a proceeding is initiated, it shall be decided in accordance with law.

JUDGE