

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

WRIT PETITION NO. 7062 OF 2019

Chandrashekhar Shriramji Deshpande -- Petitioner

Vs.

Mangesh Bhaurao Bonde 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

Mr. Manoj Kumar Mishra, Advocate for Petitioner
Mr. Sudhir Malode, Advocate for Respondent No.1
Mrs. Sangeeta Jachak, AGP for respondent No.3

CORAM : MANISH PITALE, J.

DATE : 08th JUNE, 2022

By this writ petition, the petitioner has challenged order dated 25/07/2019, passed by the respondent No.3 – Commissioner, whereby a revision application filed by the petitioner was effectively rejected and order passed by the Sub-Divisional officer was confirmed.

2. The proceedings in the present case were initiated by the petitioner under Section 143 of the Maharashtra Land Revenue Code, 1966, seeking right of way adjoining the fields of respondent Nos.1 and 2. By order dated 31/07/2000, the Naib-Tahsildar granted the application, directing that a way about 3

feet wide would be made available to the petitioner. Aggrieved by the same, the respondent No.2 filed an appeal before the Sub-Divisional Officer. Surprisingly, in an appeal filed by respondent No.2, the Sub-Divisional Officer enhanced the extent of the access way by directing total 4½ feet wide access way to be made available to the petitioner, one foot from the field of respondent No.1 and 3½ feet from the field of respondent No.2.

3. The petitioner appears to have filed a revision petition before the respondent No.3 – Commissioner, which was allowed by order dated 20/05/2011 and it was directed that the access way of 8 feet would be made available to the petitioner. The said order was challenged at the behest of respondent No.1 before this Court in Writ Petition No. 3452 of 2012. The said writ petition was partly allowed, the order of respondent No.3 – Commissioner was set aside and the matter was remanded for fresh consideration before the said respondent. It is in pursuance of the said direction that the respondent No.3 has passed the impugned order dated 25/07/2019.

4. Mr. Mishra, learned counsel appearing for the petitioner submitted that since access to the agricultural field would be of proper utility only if at least 8 feet width of access way was granted, the authorities below ought not to have restricted the access way only to 4½ feet, having found that the petitioner was entitled to such access way. It was submitted that the width of 4½ feet is not sufficient to transport bullock-carts and tractors, which would result in the petitioner not being able to enjoy proper

access to his field. On this basis, it was submitted that the impugned order deserved to be set aside and access way of at least 8 feet width ought to be granted to the petitioner.

5. On the other hand, Mrs. Sangeeta Jachak, learned Assistant Government Pleader appearing for respondent No.3 and Mr. Malode, learned counsel appearing for respondent No.1 submitted that no interference was warranted in the impugned order, particularly because the petitioner had approached the Civil Court for identical relief of access way of 8 feet width and the civil suit filed by the petitioner was dismissed. It was submitted that there was no substance in the contentions raised on behalf of the petitioner. Even otherwise, it was contended that the order passed by the Naib-Tahsildar was never challenged by the petitioner and the proceedings in appeal before the Sub-Divisional officer were at the behest of respondent No.2. This aspect was noted by the respondent No.3 in the impugned order and it was found that there was no provision for enhancing the width of the access way, as was granted by the Sub-Divisional Officer. In any case, it was submitted that no case was made out for grant of further relief to the petitioner.

6. This Court has carefully perused the impugned order. The respondent No.3 – Commissioner has indeed taken note of the civil suit filed by the petitioner for identical relief of grant of access way of 8 feet and the fact that the aforesaid civil suit was dismissed. Although, the learned counsel for the petitioner submitted that the said suit was dismissed for non-joinder of

parties, this Court is of the opinion that having raised such a specific case before the Civil Court for relief, which met with a negative result, the revenue authorities could not have considered on merits such a prayer made on behalf of the petitioner.

7. Even otherwise, a perusal of the proceedings before the authorities below show that the order of the Naib-Tahsildar granting only 3 feet access way was not challenged in appeal by the petitioner himself. In fact, it was the respondent No.2, who was aggrieved by the same and he filed the appeal before the Sub-Divisional Officer. Surprisingly, in an appeal filed by respondent No.2, further relief appears to have been granted to the petitioner by enhancing the width from 3 feet to 4½ feet. The respondent No.3 – Commissioner correctly took note of the said fact and it was noted that there was no provision for granting such enhancement of width of the access way. This Court has considered the material on record and it is found that the petitioner has failed to make out a case for any further relief in the matter. It was also brought to the notice of this Court that the said access way of 4½ feet becomes necessary for the petitioner only when there is increase in water level of a nearby river. In absence of increase in water level, admittedly the petitioner has sufficient extent of alternative access way to his field.

8. In view of the above, this Court is convinced that no case is made out for interference in the impugned order. Accordingly, the writ petition is dismissed.

9. Pending applications, if any, stand disposed of.

JUDGE