

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

WRIT PETITION NO. 7196 OF 2017

Ramkrushna Natthuji Dhole and others

vs.

The Additional Collector and others

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

Court's or Judge's Orders.

Ms. Manju Ghatode, Advocate for petitioners.
Mr. H. D. Dubey, AGP for respondent Nos. 1 to 3.
Mr. V. G. Bhamburkar, Advocate for respondent Nos. 4 & 5.

CORAM : MANISH PITALE J.

DATE : 02/05/2022

Heard learned counsel for the rival parties. By this petition, the petitioners have challenged concurrent orders passed by Tahsildar acting as Mamlatdar under Mamlatdars' Courts Act, 1906 and the Sub-Divisional Officer, whereby an application moved by respondent Nos. 4 and 5 under Section 5 of the aforesaid Act has been granted. The respondent Nos. 4 and 5 moved an application before Tahsildar raising a grievance that within previous period of six months of having moved the application, the petitioners had dug an artificial nala, thereby, disturbing the flow of a natural nala that flows

between agricultural fields belonging to the petitioners and respondents.

2. The petitioners opposed the contentions raised on behalf of the said respondents. As consequence the Tahsildar made a spot inspection report and upon perusal of the material that came on record, recorded findings in favour of respondent Nos.4 and 5 and allowed the application, thereby, directing the petitioners to undo the digging of the artificial nala and to restore status-quo ante.

3. The petitioners were aggrieved by the said order and they approached the Sub-Divisional Officer in a Revision Application under the provisions of the said Act. By an order dated 23/10/2015, the Sub-Divisional Officer set aside the order of the Tahsildar and remanded the matter back to the said authority. On 13/05/2016, a fresh spot inspection exercise was conducted in the presence of the rival parties. The spot inspection revealed that there was indeed an act of digging of an artificial nala undertaken at the behest of the petitioners and that the effect of the same was that there was every possibility of damage being caused to the agricultural fields of the respondent Nos.4 and 5. The spot inspection report was accompanied by sketch maps prepared by the

said authorities. By permitting the parties to lead evidence in that context, the Tahsildar proceeded to hold in favour of respondent Nos.4 and 5 and issued appropriate directions against the petitioners.

4. Being aggrieved by the same, the petitioners again approached the Sub-Divisional Officer. The Sub-Divisional Officer by order dated 06/10/2017, dismissed the Revision Application and upheld the order passed by the Tahsildar. It was found on an analysis of the order passed by the Tahsildar, and the material that had come on record that the conclusions rendered in favour of respondent Nos.4 and 5, did not deserve interference.

5. Aggrieved by the same, the petitioners filed the present writ petition, wherein notice was issued on 10/11/2017 and interim stay was granted. Today the petition was heard for final disposal.

6. Ms. Manju Ghatode, learned counsel appearing for the petitioners submitted that the authorities below concurrently failed to appreciate the fact that there was confusion regarding the actual boundaries of the fields of the rival parties. Even if, the authorities proceeded on the basis that an artificial nala was dug, in the face of the confusion

regarding the boundaries of the two fields, the conclusion rendered in favour of respondent Nos.4 and 5 was unsustainable. Applications were filed before this Court to rely upon certain reports, communications and material that had come on record after the impugned orders were passed by the Tahsildar and Sub-Divisional Officer.

7. According to Mr. Bhamburkar, learned counsel for respondent Nos.4 and 5, the Tahsildar on two occasions, pursuant to spot inspection conducted in the presence of the rival parties, had reported that an artificial nala had been indeed dug at the behest of the petitioners, which had disturbed the natural flow of the existing nala. There was every possibility of damage being caused to the agricultural fields of the respondent Nos.4 and 5 and that therefore, no interference was warranted.

8. This Court has perused the material on record and heard learned counsel for the rival parties in that background. In applications filed under Section 5 of the aforesaid Act, the Tahsildar exercising powers of the Mamlatdar is expected to undertake spot inspections as per Section 19 of the said Act, so as to ascertain the ground realities. In the present case, since the matter was remanded by

the Sub-Divisional Officer, there were at least two spot inspection reports and sketch maps prepared by the Tahsildar while examining the rival contentions. The spot inspection reports and the sketch maps on record indicate that an artificial nala was indeed dug at the behest of the petitioners and that they were unable to show any permission obtained prior to undertaking such an exercise. It was also found on the basis of such spot inspection that digging up such an artificial nala had affected the natural flow of water in the existing nala and that there was every possibility of damage being caused to the agricultural fields of the respondent Nos.4 and 5. The Tahsildar, on the basis of such material and after giving an opportunity to the parties to lead evidence, found that respondent Nos.4 and 5 had made out a case for exercise of power under Section 5 of the Act. The Sub-Divisional Officer also considered the material on record and agreed with the findings rendered by the Tahsildar.

9. This Court has perused the reports and the sketch maps on record. The petitioners were unable to make out a case in their favour by harping on the contention that there was confusion as regards the boundaries between the fields and that therefore, the authorities below ought not to have issued directions

against the petitioners. Much emphasis was placed on the alleged confusion regarding boundaries between the two fields. It was sought to be suggested that unless there was proper measurement of the adjoining fields, the orders passed by the Tahsildar and the Sub-Divisional Officer ought not to be implemented. This Court is not impressed by the said submission, for the reason that existence of a nala with natural flow of water is sufficiently established on the basis of the spot inspection reports. The fact that the petitioners dug an artificial nala, is also found on facts on the basis of two spot inspection reports and the sketch maps accompanying them. It is also reported that digging of such an artificial nala would have the effect of damaging the fields of respondent Nos.4 and 5 during the rainy season, due to overflow of water. Merely because there is some purported confusion regarding boundaries of the fields cannot be a ground for interference in the concurrent findings rendered by the two authorities below.

10. In any case, as per the settled law in the context of the provisions of the said Act, particularly Section 22 thereof, if the petitioners have any grievance despite the orders passed concurrently by the Tahsildar and the Sub-Divisional Officer, they can

approach the competent Civil Court to establish their claims. But, the petitioners have failed to make out a case for interference in the orders passed by the Tahsildar and Sub-Divisional Officer. This Court is satisfied that the powers available to the said authorities under the provisions of the said Act have been exercised in a fair and reasonable manner to reach conclusions that cannot be said to be perverse in any manner.

11. In view of the above, the writ petition is dismissed.

12. Pending application/s, if any are disposed of.

JUDGE