

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 303 OF 2021

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| 1. | Mohan Baba Khomne
Age.60 years, Occ. Agriculture, | .. | Petitioners |
| 2. | Anil Mohan Khomne
Age. 35 years, Occ. Agriculture, | | |
| 3. | Atul Mohan Khomne,
Age. 30 years, Occ. Agriculture, | | |
| 4. | Sau. Tarabai Mohan Khomne,
Age. 55 years, Occ. Agriculture, | | |

All R/o. Loni Vyanknath (Bhanhali),
Tq. Shrigonda, Dist. Ahmednagar.

Versus

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| 1. | Sunil Bapurao Fatakade,
Age. 40 years, Occ. Agriculture,
R/o. Loni Vyanknath (Bhanhali),
Tq. Shrigonda, Dist. Ahmednagar. | .. | Respondents |
| 2. | Babu Rangnath Khomne
Age. 45 years, Occ. Agriculture, | | |
| 3. | The Tahsildar, Shrigonda,
Tq. Shrigonda, Dist. Ahmednagar. | | |
| 4. | The Sub-Divisional Officer,
Shrigonda Parner Sub-Division,
Ahmednagar, Dist. Ahmednagar. | | |
| 5. | State of Maharashtra | | |

Mr.V.R. Dhorde, Advocate for the petitioners.
Mr.Yuvraj S. Choudhari, Advocate for the respondents.
Mr.K.B. Jadhavar, AGP for respondent/State.

CORAM	:	KISHORE C. SANT, J.
RESERVED ON	:	04.07.2023
PRONOUNCED ON	:	25.07.2023

ORDER :-

01. The petitioners are original respondents before the Tahsildar, Shrigonda in a case under section 5(2) of the Mamlatdars' Courts Act. Respondent Nos. 1 and 2 are the original applicants. Other respondents are the Government and its Officers, who decided the proceedings.

02. The respondents are owners of land Gat No.726 to the extent of land admeasuring 43 R + 15 R pk, total admeasuring 58 R. They purchased the land from the earlier owner on 26.06.2015. The petitioners are the owners of land Gat No.724. The land Gat No.732 is owned by the Government. However, as per the allegations, the petitioners have encroached upon the said land. It is a case of the respondents that there is right of way to go to their field from the land of present petitioners i.e. Gat No.724. It is alleged that the petitioners caused obstruction on the road going to the land

of the respondents prior to 15 days of filing the application. The application came to be filed on 09.08.2019. The petitioners appeared before the Tahsildar. They denied that there is obstruction caused by them. It is further case of the petitioners that there is another road that goes to the land of the respondents from the *Gavthan*. The respondents do not require the road from Gat No.724. Gat No.732 belongs to their ancestors. The Government had taken soil from the land GatNo.732 for construction of canal which goes by the side of Gat No.724. It is also alleged that it is the respondents who are trying to encroach in the land of the petitioners. The petitioners have, therefore, filed a case bearing RCS No.275 of 2019 in the Civil Court at Shrigonda. The panchanama was drawn in presence of the relatives of the respondents and said need not be believed. The Tahsildar on receipt of the application had directed the panchanama of the land. He personally visited the spot.

03. The Tahsildar recorded in the panchanama that while going to the land Gat No.726, there is a way from Gat No.724 i.e. land belonging to the petitioner on the eastern side of land of Gat No.732, that goes from the west to east. The said road is also shown in the map. However, at the time of

inspection, the said road was seen as ploughed. The land Gat No.732 is shown as sub-canal. Some portion of land Gat No.732 is also shown to be part of canal. It is specifically recorded that the road is seen in the village map as demanded by the respondents.

04. On the basis of pleadings and on the basis of spot panchanama, the learned Tahsildar came to a conclusion that the petitioners have obstructed the road. He specifically recorded that the road is in existence since long and same is obstructed by the petitioners. He also relied upon village map to come to a conclusion that there is a way. The Tahsildar allowed the application on these findings by order dated 26.11.2019.

05. The petitioners being aggrieved by the decision of the Tahsildar, filed Revision Application No.300 of 2019 before the Sub-Divisional Officer, Shrigonda. The learned Sub-Divisional Officer after hearing the parties rejected the revision by his judgment and order dated 16.12.2020. The Sub-Divisional Officer confirmed the findings of the Tahsildar. He also observed that there is no alternative road available to the respondents. The petitioners are thus before this Court by filing this writ petition. It is case of the

petitioners that both the authorities have wrongly recorded the findings. The panchanama was not properly drawn. The persons who acted as panch are related to the respondents and therefore the panchanama is drawn in a manner to suit the respondents. There was no official map on record. The panchanama was thus wrongly drawn. There is alternative way to go to the land of the respondents. The petitioners, thus, prayed for quashing and setting aside the impugned judgment and order.

06. The learned Advocate for the respondents vehemently opposes the petition, by filing an affidavit in reply. He submits that in the suit i.e. RCS No.275 of 2019 the Civil Court refused the injunction against the petitioners. The second appeals that were filed bearing Nos. 605 of 2015 and 606 of 2015 pending before this Court are between the petitioners and their maternal aunt, in respect of the partition. So, no claim of the petitioners can be considered on the basis of those second appeals. He also produced on record a notice dated 22.01.2020 issued by the Executive Engineer, Irrigation Department, Kukdi Division No.2, Shrigonda to the Sub-Division, Kukdi. This communication was issued on the basis of complaint made by the respondents directing to open the way from land Gat No.727 and 732. This letter was

issued on the basis of judgment of the Tahsildar. One more letter is relied upon issued by the Branch Manager, Bisapur Canal, Irrigation Department, addressed to the petitioner. It is stated in the said letter that it is observed that the petitioners have encroached upon land Gat No.732 to the extent of 30R and the said is illegal. It is informed that if the said encroachment is not removed, even criminal case will be filed. The respondents have also produced on record an order passed by the Civil Judge on Exh.5 in RCS No.275 of 2019 dated 05.10.2020, rejecting the injunction application. The learned Advocate for the petitioner, however, submits that the order passed by the Civil Court is based upon panchanama drawn by the Tahsildar and therefore, cannot be relied upon. It is further submission that the village map clearly shows existence of way. A specific finding of the Tahsildar that road is obstructed does not require any interference. The map was drawn in the presence of the petitioners. The village map is rightly considered by both the authorities. When the road is shown in the village map, there is no reason to disbelieve the said map. On convincing material is produced on record to disbelieve the findings and the village map.

07. The learned AGP also has filed an affidavit of Nayab Tahsildar,

Shrigonda, Tq. Shrigonda, stating that there is a road shown in the village map. He has also produced a village map on record. Thus the Court after hearing the parties and on going through the record, especially village map, finds that there is a road shown from land Gat No.724 to go to land Gat No.726. The petitioner has filed additional affidavit on 03.08.2022, wherein certain sale-deeds are produced on record. It is stated that the in the suit after rejection of injunction application, the petitioners filed MCA No.27 of 2020 in the District Court, wherein the Court Commissioner was appointed. The Court Commissioner in its report stated that it will seen that earlier spot inspection done by the Tahsildar is not as per the record.

08. The report dated 25.04.2022 is also placed on record. It is recorded that the road goes by the side of canal and same is on the height of 3 feet from the road and one has to climb slightly for approaching the canal road, which is to the east of both these Gat numbers. The affidavit further states that the house of the respondent is towards west of these lands. Thus, the respondents do not require the alleged road to go to south.

09. On this basis, the learned Advocate for the petitioner submits that

no case was made out by the respondents to allow the application before the Tahsildar. He further submits that there is no cause of action made out. From the prayer clause (B) itself it is clear that the road is demanded if in-case that is destructed. He thus submits that the application is filed only on the apprehension. From the reply submitted before the Tahsildar he submits that there are two other persons, namely, Shivaji and Ashok, who are also co-possessors of land Gat No.726. Had there been a road, even they would would have claimed this road. It is only because of the previous dispute between the parties, the application was filed before the Tahsildar. The houses of the respondents are on the southern side from the land and therefore they do not require this road to go to the house. So far as Gat No.732 is concerned, he submits that it was belonging to the ancestors. The respondents are trying to encroach upon the land of the petitioner and therefore this application is filed.

10. On submissions and going through record, this Court finds from the spot inspection drawn by the Tahsildar that there is way seen in the village map. It is seen to have been obstructed. The road goes by the side of canal to the land of the respondents.

11. This Court finds that no case is made out to disturb the findings of fact recorded by both the authorities below in the limited jurisdiction available to this Court under Article 227 of the Constitution of India. The petition, therefore, deserves to be dismissed and the same is dismissed.

[KISHORE C. SANT, J.]

. At this stage, the learned Advocate for the petitioner makes prayer for continuation of interim relief, since it is running in his favour. The learned Advocate for the respondents opposes the prayer. However, looking to the fact that the interim relief is running in favour of the petitioner since long, same is continued for three weeks from today.

[KISHORE C. SANT, J.]