

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

WRIT PETITION NO. 7035 OF 2018

Yuvraj Barku Patil

.. Petitioner

Versus

The State of Maharashtra
Through its Sub Divisional Officer
and others

.. Respondents

Mr. Vijay B. Patil, Advocate for the Petitioner.
Smt. D. S. Jape, AGP for Respondent Nos. 1 and 2.
Mr. V. Y. Patil, Advocate for Respondent No. 3.

CORAM : KISHORE C. SANT, J.

DATED : 27th JUNE, 2023.

P C. :-

. Heard learned advocates for the parties at length. Taken up for final disposal by consent of the parties.

2. The petition is directed against the order passed by the S.D.O. under Section 23 sub section 2 of the Mamlatdars' Courts Act, 1906 (hereinafter referred to as "Act of 1906") exercising the powers of revision. The S.D.O. by way of impugned order dated 08.05.2017 has rejected the revision application filed by the petitioner. The petitioner had challenged the order passed by the Tahsildar dated 13.12.2016 in the proceeding filed under Section 5 of the Act of 1906 by which the

Tahsildar had directed the petitioner to allow the respondents to use the way by removing the obstruction on the common easementary road in Gat No. 116 of village Garkheda, Taluka Dharangaon.

3. The main argument of the petitioner is that, in the application before the Tahsildar no specific averments were made by the respondents as regards the date of first obstruction as prescribed under Section 7 of the Act of 1906. His other ground is that the Tahsildar visited the spot on 13.11.2016 and on the same day the file was closed for order. No opportunity was given to the parties to put their say and therefore, the principles of natural justice have been violated. It is further submitted that, the S.D.O. also has not considered the fact that, the principles of natural justice are not followed.

4. Learned advocate for respondent No. 3 vehemently opposes the petition. He submits that the necessary details sufficient to show his grievance are made in the application before the Tahsildar. The Tahsildar relying upon the spot inspection and the statements of the concerned persons has rightly come to conclusion that the petitioner has caused obstruction in the way. He thus submits that, both the authorities have rightly considered this aspect. So far as giving hearing to the petitioner is concerned, he submits that from the order it is clearly seen that the Tahsildar has made proper enquiry with the parties

and other persons from the adjoining lands.

5. Learned A.G.P. also supports the order stating that, ultimately what needs to be seen is that as to whether there was a road in existence and whether there is obstruction caused. He further submits that, on the basis of panchanama the Tahsildar has rightly drawn conclusion about existence of the road and obstruction created by the petitioner and prays for rejection of the petition.

6. The petitioner while arguing his case has shown judgment passed by this Court in Writ Petition No. 5116/2018 dated 29.11.2021 wherein, this Court has held that the orders impugned in that petition were passed without considering the provisions of Section 12 of the Act of 1906 and also Sections 7 to 11 of the Act of 1906. This Court finds that this judgment was considered by considering various other judgments and had disposed off the petition with liberty to the respondents therein to approach the Tahsildar in case they intend to.

7. On going through the submissions and the material on record this Court finds that, in panchanama it is recorded that there was a way passing from Gat No. 116. This Court at this stage does not find anything to disbelieve the findings recorded by both the authorities.

However, since there was no compliance of the procedure as prescribed under Section 7 to 11 of the Act of 1906 this Court finds that, the matter can be remanded to the Tahsildar for conducting fresh enquiry by giving proper opportunity of hearing to both the parties and keeping in view the provisions of Sections 7 to 12 and 19 of the Act of 1906.

8. In the meantime, the interest of the respondent who has secured two judgments concurrently needs to be secured. Till the decision by the Tahsildar and subject to decision the respondents shall be entitled to use the way that is granted by the Tahsildar and confirmed by the S.D.O. The Tahsildar shall keep in mind the judgment passed in Writ Petition No. 5116/2018 and pass fresh order.

9. With this, the writ petition stands disposed off.

(KISHORE C. SANT, J.)

PS.B.