

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

WRIT PETITION NO. 5324 OF 2023

- | | | |
|---|----|-------------|
| 1. Pramod s/o. Ashokrao Jadhav
Age. 25 years, Occ. Agriculture,
R/o. Savargaon Khurd,
Tq. Manwat and Dist. Parbhani. | .. | Petitioners |
| | | |
| 2. Ramchandra s/o. Baburao Jadhav
Age. 45 years, Occ. Agriculture,
R/o. As above. | | |
| Versus | | |
| 1. Kashinath w/o. Bhanudas Jadhav
Age. 45 years, Occ. Agriculture,
R/o. Savargaon Khurd,
Tq. Manwat, Dist. Parbhani. | .. | Respondents |
| | | |
| 2. Govind s/o. Munjabbhau Jadhav
Age. 28 years, Occ. Agriculture,
R/o. As above. | | |
| | | |
| 3. Muktabai w/o. Munjabhau Jadhav
Age. 47 years, Occ. Household,
R/o. As above. | | |
| | | |
| 4. Jaishree w/o. Kashinath Jadhav
Age. 40 years, Occ. Agriculture,
R/o. As above. | | |
| | | |
| 5. Rutuja d/o. Kashinath Jadhav
Age. 25 years, Occ. Agriculture,
R/o. As above. | | |
| | | |
| 6. Tahsildar Manvat,
Tq. Manvat and Dist. Parbhani. | | |

7. Sub Division Officer Pathri
Tq. Pathri and Dist. Parbhani.

Mr.V.P. Kadam, Advocate for the petitioners.
Mr.M.K. Bhosle, Advocate for respondent No.2.
Mrs.D.S. Jape, AGP for the respondent/State.

CORAM : KISHORE C. SANT, J.
DATED : 07.07.2023

PC :-

01. Heard the learned Advocates for the parties. The petitioner is owner of Gat No.131 and 132 from village Savargaon Kh. and had challenged an order passed by the learned Sub-Divisional Officer under section 23(2) of the Mamlatdar's Courts Act. By way of the impugned judgment, the learned Sub-Divisional Officer, Pathri has confirmed the order passed by the learned Tahsildar, Pathri directing to remove the obstruction caused by the petitioners on the road going to land Gat Nos. 133 and 134 of the respondents.

02. The facts in short are that on 18.10.2022 filed an application to the Tahsildar, Manvat alleging that the petitioners have obstructed the road that goes to their field and which is in use. There was one more application dated 20.10.2022 filed for the same purpose. The learned Tahsildar directed the Circle Officer to draw panchanama. The panchanama accordingly was

drawn on 15.11.2022. In panchanama it is clearly observed that these petitioners have obstructed the way that goes to the land of the respondents. The panchanama is also signed by the petitioner No.1. The Tahsildar based upon the panchanama and submissions, recorded finding that there was a road in existence and same is obstructed by the petitioners. He has specifically recorded that the petitioners on number of occasions sought time to produce evidence on record. However, no evidence was produced. Thus, after considering the material that was on record, the learned Tahsildar allowed the application and directed the petitioners to remove the obstructions on the way.

03. The petitioners challenged the order before the learned SDO. The learned SDO by order dated 12.04.2023 rejected the revision application. The petitioners are therefore before this Court.

04. The learned Advocate for the petitioners vehemently argued that the Tahsildar has not followed the procedure as prescribed under section 7 of the Mamlatdar's Courts Act. He submits that no particulars are given in the application giving cause of action, specific nature of obstruction and thus the

application was not maintainable. The petitioner further relies upon judgment passed in Writ Petition No.3266 of 2022 in the case of Taraba Vs. Vandana w/o. Gajanan Tikare & ors., passed by this Court on 22.03.2022, wherein this Court has held that it was necessary for the Mamlatdar to follow the procedure and decide the application by following the procedure prescribed under sections 7,9,11 and 12 of the Act. In the said judgment the Court also observed that there was no opportunity to cross-examine the witness. In that view of the matter this Court had remanded the matter back to the authority.

05. The learned Advocate for the respondents opposes the petition stating that in application dated 18.10.2022, all particulars are given including the way Gat No., date of cause of action, etc. He submits that the Tahsildar has gone through the panchanama, which clearly shows that there is alternative way to go to their field. The panchanama was even signed by petitioner No.1. The alleged alternative way shown is 20 feet deep Nala and it is not possible to use that way to go to the field of the respondent. It is also specifically recorded that there is no alternative way to go to the land. He also relies upon judgment passed in Writ Petition No.3923

of 2021 in the case of Shriram Abhiman Nafade & Ors. Vs. State of Maharashtra and Ors. This Court in the said judgment has observed that the Act is meant for the agriculturists who are not normally aware of the requirements of the law. They are also not aware of sections 8 and 9 of the Mamlatdar's Courts Act and therefore it is for the Mamlatdar to comply with the procedure. Failure of the Mamlatdar to perform his obligation need not result in taking away right of the parties. The question of obstruction and right of way are to be decided expeditiously. The another observation in the said order is that there was no alternative way available.

06. This Court, considering the submissions and the judgments, finds that sufficient particulars were given in the application dated 18.10.2022. The panchanama was executed. On panchanama signature of petitioner No.1 also appears to be there. Though petitioners now have raised ground of non-observance of the procedure under section 8, however, they had not raised that objection before the Tahsildar. For the first time the petitioners had raised that objection before the SDO. Going through the reasoning by both the authorities, this Court finds that no illegality or perversity is committed by

the authority. Since the existence of road is necessarily a finding of fact, it need not be brushed aside without any illegality or error being pointed out. The respondents submit that on 09.05.2023 the impugned order is already implemented. The road is made clear by removing obstruction. He submits that since the order is now already implemented, it would not be proper to set aside the impugned judgment even for this reason.

07. Since the order is already implemented, for this reason also, no interference is called for. The writ petition, therefore, stands dismissed.

[KISHORE C. SANT, J.]