

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

**SECOND APPEAL NO.229 OF 2023
WITH CA/11285/2022 IN SA/229/2023**

**BHASKAR DEVIDAS DEOKAR AND ORS
VERSUS
THE STATE OF MAHARASHTRA THRO COLLECTOR, OSMANABAD
AND ORS**

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Advocate for Appellants : Mr. Patil Hanmant V.
AGP for Respondent/State : Mr. A.B. Chate
Advocate for Respondent Nos.4 to 6 : Mr. S.N. Janakwade
Advocate for Respondent Nos.9/1 to 9/4 : Mr. S.S. Dixit h/f Mr. A.S.
Kulkarni

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CORAM : S.G. MEHARE, J.

DATED : AUGUST 25, 2023

PER COURT:-

1. Heard the respective counsels.
2. The present second appeal is against the dismissal of suit and appeal.
3. The brief facts giving rise to the suit were that the appellants are the owners of gut nos.173, 116 and 107 of village Dautpur. The respondents had moved an application for granting a way for their fields. The Tahasildar granted them a way through the boundaries of the three fields of the appellant under Section 143 of the Maharashtra Land Revenue Code ('M.L.R. Code' for short).
4. Learned counsel for the appellants would submit that the alternate way was in existence and available for the respondents.

However, by exceeding his jurisdiction under Section 143 of M.L.R. Code, the Tahasildar granted a new way through the boundaries of fields of plaintiff bearing gut no.173, 116 and 107. The land of the respondents bearing survey no.108 and 109 was divided by a river. The major portion of gut no.108 was on the other end of the river. They were using the way through the village boundary of Rajuri. However, all of a sudden, they claimed a way through the fields of the appellants.

5. He has raised a serious objection that initially, the petition was filed under Section 5 of the Mamlatdars' Court Act. However, it did not comply with Section 5 of the said Act. The Tahasildar could not convert the said application under Section 143 of M.L.R. Code when the relief was sought under the Mamlatdars Court Act. The Tahasildar, on his own, changed his jurisdiction. When the petition was filed under Section 5 of the Mamlatdars' Court Act, it was presumed that the way was in existence. When the case of the respondents was that the road was in existence, the Tahasildar cannot consider the application under Section 143 of M.L.R. Code. The proposed way granted to the respondents by the Tahasildar is harmful to the peaceful enjoyment of the land, and there is a great possibility of damaging the crop. Since both fields of respondents were divided by the nallah or the river, they could not enjoy their fields fully. A tar road running north-south from village Dautpur to Rajuri joins the

village boundary of Rajuri, which reaches gut no.109, and both respondents used that way to reach their fields. The way to enjoy their property was in existence, but the Tahasildar exceeded his powers and created a new way that too, a zigzag through the fields of the appellants that caused great prejudice to the rights of the plaintiff. Both courts have not considered these material aspects. Therefore, the substantial questions of law: (a) Whether the Tahasildar can convert the suit filed under Section 5 of the Mamlatdars' Court Act into an application under Section 143 of M.L.R. Code; (b) Whether the Tahasildar can grant or create a new way for the adjoining owners through the boundary of the field of the plaintiffs/appellants when the alternate way was in existence; (c) Whether the Tahasildar can exercise powers under Section 5 of the Mamlatdars' Court Act and Section 143 of M.L.R. Code simultaneously.

6. Per contra, learned counsel for the respondents would submit that the application was exclusively filed under Section 143 of M.L.R. Code. Hence, there was no question of treating the application a plaint under Section 5 of the Mamlatdars' Court Act. The respondents had no suitable way to use their land. Hence, the Tahasildar has invoked the powers under Section 143 of the M.L.R. Code to grant the adjoining land owners a convenient road for better cultivation. No harm would be caused to the appellants. The way granted by the impugned order of the Tahasildar is already brought

into existence and in use as per the orders of the Tahasildar. The panchanama about the execution of the Tahasildar's order was drawn by the Circle Inspector in 2019. However, the appellant/plaintiff suddenly started obstructing the use and enjoyment of the said road. A report was lodged to the police, and the action was initiated against them. Both Courts have correctly appreciated the order of the Tahasildar. No substantial question of law is involved in this appeal. This appeal is wasting the valuable time of the Court. The appellants never complained about the use of the road granted by the Tahasildar and the damage sustained to their lands. In a peculiar situation, the zigzag road was granted; hence, the Tahasildar has correctly granted the zigzag way. There was no alternate way to enjoy the fields of the present respondents. Since no substantial question of law is involved in this appeal, the appeal is liable to be dismissed at admission hearing.

7. The Additional Collector, Osmanabad, had issued the direction to the Tahasildar regarding the nature of the application and directed to comment on whether it falls under the Mamlatdars' Court Act under Section 5 of the Mamlatdars' Court Act. Undisputedly, the Tahasildar had exercised the powers under Section 143 of M.L.R. Code. The Tahasildar, under the Mamlatdar Courts Act, has the power to issue the injunction causing or attempting to cause disturbance in the use of roads or customary ways. In the same way, the Tahasildar

also has the powers under Section 143 of M.L.R. Code to decide the claim of any person holding land in survey number to the right of way over the boundaries of other survey numbers. The powers and jurisdiction of the Tahasildar under these two Acts are different. These legal aspects appear to have been not considered by both Courts. Hence, this Court is satisfied that the substantial questions of law are involved in this case. Hence, the following substantial questions of law have been formulated:

(a) Can the Tahasildar convert the suit filed under Section 5 of the Mamlatdars Court Act into an application under Section 143 of M.L.R. Code?

(b) When the Tahasildar, in the exercise of his powers under Section 143 of M.L.R. Code, grant or create a new way for the adjoining owners through the boundary of the field of the others?

(c) Can the Tahasildar exercise the powers under the Mamlatdars' Court Act and under Section 143 of M.L.R. Code simultaneously.

8. **Admit.**

9. Learned AGP waives service of notice for respondents nos.1 to 3. Learned counsel S.N. Janakwade waives service of notice for respondent nos.4 to 6, and learned counsel Mr. A.S. Kulkarni waives service of notice for respondent nos.9/1 to 9/4.

10. Call record and proceedings.

11. Since there is no cogent and reliable evidence about the use of way granted to the respondents in pursuance of the impugned order of Tahasildar, no interim orders have been passed at this juncture. However, the parties are at liberty to move an application for interim relief afresh if they have material to satisfy the Court that the impugned judgment and order have not been executed and implemented.

12. Civil Application No.11285 of 2022 stands disposed of for the reason that there were no injunctive or any other orders during the pendency of the appeal.

(S.G. MEHARE, J.)