

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

WRIT PETITION NO. 11928 OF 2021

1. Sahebrao Murlidhar Khatane .. Petitioners
Age. 72 years, Occ. Agri.,
2. Babasaheb Martand Khatane
Age. 62 years, Occ. Agri.,
3. Kailas Jaywant Gunjal
Age. 55 years, Occ. Agri.,
[deleted as per order dated 28.10.2021]
4. Vijay Dhananjay Narwade
Age. 48 years, Occ. Agri.,
5. Baban Karbhari Pote
Age. 57 years, Occ. Agri.,
6. Kailas Janardhan Narwade
Age. 52 years, Occ. Agri.,
7. Pandurang Bhikaji Khatane
Age. 53 years, Occ. Agri.,
[deleted as per order dated 28.10.2021]

All r/o. Kavkhed Ganga, Tq. Vaijapur,
Dist. Aurangabad.

Versus

1. Babasaheb Baburao Thete .. Respondents
deceased (respondent no.2 to 4 are LRs.)
2. Sulochana w/o. Babasaheb Thete
Age. 62 years, Occ. Agri.,

3. Radhakisan Babasaheb Thete
Age. 37 years, Occ.Agri.,
4. Govind Babasaheb Thete,
Age. 35 years, Occ. Agri.,

All r/o. Savkhed Ganta, Tq. Vaijapur,
Dist. Aurangabad.
5. The Tahsildar,
Vaijapur, Tq. Vaijapur,
Dist. Aurangabad.
6. The Additional Collector (Rehabilitation)
Collector Office, Aurangabad.

Mr.Narendra D. Sonavane, Advocate for the petitioners.
Mr.VR. Dhorde, Advocate for respondent Nos.2 to 4.
Mr.K.B. Jadhavar, AGP for the respondent/State.

CORAM	:	KISHORE C. SANT, J.
RESERVED ON	:	16.06.2023
PRONOUNCED ON	:	13.07.2023

ORDER :-

01. This petition is directed against an order passed by the learned Dy. Collector (Rehabilitation), Aurangabad in revision bearing No. 2019/Revision/Mamlatdar/CR-166 dated 29.07.2021, rejecting the Revision of the petitioners. By way of the impugned order, the order passed by the learned Tahsildar, Vaijapur directing the petitioners not to obstruct the way of

the respondents is confirmed. The order by the learned Tahsildar was passed under section 5 of the Mamlatdar's Courts Act.

02. The facts in short are that respondent Nos. 1 to 4 along with others filed an application under section 5 of the Mamlatdar's Courts Act before the learned Tahsildar claiming that their right of way is obstructed by the petitioners. It is the case that the respondents are having road to go to their land from Gat No.144 and 145 belonging to the petitioners. The learned Tahsildar directed the Circle Officer to draw panchanama and submit a report. The spot was also inspected. On the basis of the report and spot inspection, the application of the respondents came to be allowed by judgment and order dated 02.08.2018.

03. The petitioners, therefore, filed revision application before the learned Deputy Collector, Aurangabad. The learned Dy. Collector after going through the record and submissions of the parties, confirmed the findings and the order passed by the learned Tahsildar by rejecting the revision application by judgment and order dated 29.07.2021. The petitioners are, therefore, before this Court.

04. This Court by earlier order was pleased to call for the record and proceedings. The record and proceedings is also received by this Court.

05. The learned Advocate for the petitioners submits that the respondents had never asked for this road. Their land is Gat No.142. There is no specific date of cause of action mentioned in the application. From the panchanama he submits that there is no specific mention of the road in existence. There is no material to come to a conclusion that there was road in existence. Under the garb of provisions under section 5 of the Act, the respondents have in-fact asked for new road, which cannot be done. The learned Tahsildar has not framed issues and has not recorded specific findings as required under the Act. The Tahsildar has thus failed to exercise his jurisdiction properly. As regards the judgment of the learned Dy. Collector, he submits that the authority has recorded perverse findings that the petitioners on their own have shown their readiness to give the road. On the basis of map annexed to the petition, he submits that merely for the convenience of the parties, no road can be given when alternative way is available to the parties.

06. Learned Advocate Mr. Dhorde for the respondents/original applicants submits that before the Tahsildar, no specific objection was raised by the petitioners in the pleadings regarding not following the procedure. From the application he submits that in-fact specifically there is prayer made for giving road by removing obstruction by giving cause of action and is sufficient compliance of the requirements under the law. From the map (page No.117 of the petition) he submits that there is clearly a road appearing to go to the land of the respondents. He submits that the petitioners, in-fact, do not want to give road to the respondents, though there is already a road in existence. They have destroyed their own road.

07. The learned AGP supports the impugned judgment and order by submitting that both the authorities below have rightly considered the case and the material on record. The petitioners have failed to show alternative way and therefore the authorities have rightly held that the only way to go to the land of the respondents is from Gat No.144 and 145. The learned Sub-Divisional Officer has also considered the village map, shiv-rasta (boundary road and cart road) and has passed the order and no interference is required

in the impugned judgment and order.

08. In rejoinder the learned Advocate for the petitioners submits that if the road was already in existence, there ought to have been mention of the said road in the map. However, the same is not seen and submits that the petition deserves to be allowed.

09. The learned Advocate for the petitioners has relied upon judgment in the case of **Tarabai Ravsaheb Chaudhari & Ors. Vs. State of Maharashtra & Ors., reported in 2022 DGLS (Bom) 1807.** In said case, this Court had set aside the orders passed by the authorities giving way and directing the petitioner therein to remove obstruction. The Court was mainly on the point of non-observance of the procedure to be followed while deciding the application under section 5 of the Act. In that case, this Court observed that there was complete go-bye given to the procedure under the Act and the dispute was decided. There even cause of action was not mentioned in the application to show that the suit was brought within six months from the date of cause of action. In this case, however, this Court finds that specific cause of action is mentioned i.e. 20.05.2018 as the date of cause of action. The

application was filed on 16.07.2018. Thus, the judgment relied upon is not helpful to the petitioners.

10. The next judgment relied upon by the learned Advocate for the petitioners is in the case of **Surendra and Others Vs. Deputy Collector, Murtizapur Barshitakli & Ors., reported in 2022 DGLS (Bom.) 1163.** That was a case in respect of an application under section 143 of the Maharashtra Land Revenue Code and the same was allowed by a cryptic order by the Tahsildar. In view of that fact the Court had remanded the matter by quashing the orders passed by the Tahsildar and the Divisional authority. This Court finds that this case is also not applicable to the case in hand.

11. The last judgment relied upon by the learned Advocate for the petitioners is in the case of **Jagdish Shriram Dhande Vs. Ramchandra Chinduji Dhande and Ors., reported in 2019 DGLS(Bom.) 1207.** In the said case, the Court held that no opportunity of cross-examination was given to the parties. This Court finds that in the present case, no case is made out that permission to cross-examination was prayed for and that is refused by the Tahsildar. It is not pointed out that even in the revision, this ground was taken. Therefore,

this Court finds that the above cited judgments are not applicable to the case of the petitioners.

12. This Court has gone through the submission and the record as well. On going through the same, this Court finds that both the authorities have held that there was a road in existence for the respondents to go from land Gat no.144 and 145. The panchanama is signed by petitioner Nos.2,4 and 6. There cannot be any dispute about the panchanama. There are also photographs on record. Taking overall view of the matter, when the authorities have verified the facts from the village map, panchanama and the material produced before them and since there is concurrent findings of fact, this Court finds that no interference is permissible while exercising jurisdiction under Article 227 of the Constitution of India. Thus, no case is made out calling for interference in the impugned judgment and order.

13. The writ petition is dismissed. No order as to costs.

[KISHORE C. SANT, J.]