

THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

WRIT PETITION NO. 13023 OF 2021

1. Madan s/o Shenphad Ghayvat,
Age: 30 years, Occu. Agri,
2. Nana s/o Shenphad Ghayvat,
Age: 40 years, Occu. Agri,
3. Anil s/o Shenphad Ghayvat,
Age: 26 years, Occu. Agri,
4. Shenphad s/o Mahadu Ghayvat,
Age: 55 years, Occu. Agri,
All R/o; Dautpur
Tq. Bhokardan Dist. Jalna.

... Petitioners
(Orig. Non Applicants)

Versus

1. The Sub Divisional Officer,
Bhokardan Dist. Jalna.
2. The Mamlatdar & Tahsildar,
Bhokardan, Dist; Jalna.
3. Narayan s/o Rama Ghayvat,
Age: 60 years Occ; Agri,
R/o; Dautpur
Tq. Bhokardan Dist. Jalna.
4. Circle Officer Sipora (Bajar),
Tq. Bhokardan Dist. Jalna.

... Respondents
(Res no. 3 is Orig, applicant)

...

Mr. Nitin S. Ingle, Advocate for Petitioners.

Mrs. V. S. Choudhari, AGP for Respondent Nos.1, 2 & 4.

Mr. V. D. Patnurkar, Advocate for Respondent No.3.

...

CORAM : **SANJAY A. DESHMUKH, J.**
RESERVED ON : 08th August, 2023.
PRONOUNCED ON : 07th November, 2023.

J U D G M E N T :

1 Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2 This writ petition is directed against the order dated 29th October, 2021 passed by respondent No.1 (Sub-Divisional Officer) in Revenue Revision No.110 of 2020 and against the order dated 16th October, 2020 passed by respondent No.2 (Tahsildar) in the proceedings bearing No.2020/JAMA-1/CR-44. The issue was right of way of agricultural land.

3 Respondent No.3 filed an application before the Tahsildar, Bhokardan, Jalna and prayed to remove the obstruction caused to his right of way, which is closed by the petitioners in block No.131 of village Dautpur, Taluka Bhokardan, District Jalna. It is jointly owned by petitioners and respondent No.3. He contended that prior to the partition of their properties, it was agreed in the presence of *Panchas* to keep 10 feet road to proceed from the said block, for respondent No.3. It was kept accordingly. However, now the petitioners have started to cause obstruction to that road. Respondent No.3 is residing

in that property and he has no alternative way to reach to his land block No.131 of village Dautpur.

4 The Tahsildar/respondent No.2 issued notice to the petitioners. They filed their objections. The Tahsildar further called report from the Circle Inspector, Bhokardan. The Circle Inspector visited and drew up rough map and *Panchanama* of block No.131 and adjacent properties in the presence of *Panchas*, petitioners and respondent No.3. After considering the written submissions of the petitioners and the respondent No.3, the Tahsildar held that the petitioners have illegally caused obstruction to the right of way of respondent No.3, which proceeds from block No.131 of village Dautpur, Taluka Bhokardan, District Jalna. It was directed to remove the obstruction caused to said right of way from block No.131.

5 Feeling aggrieved by that order, the petitioners had preferred revision before the SDO, Bhokardan. The decision taken by the Tahsildar was held legal and correct. The revision was dismissed. This writ petition is filed by the petitioners to quash and set aside these decisions.

6 The grounds of objections of this writ petition are that, full opportunity was not given to the petitioners as per Mamlatdars Courts Act. There is no record to show that alleged way is available as per

the application filed by respondent No.3. Respondent No.2 has not followed mandatory procedure as per the Mamlatdars Courts Act, 1906. The particulars required under Section 7 of the Mamlatdars Courts Act, 1906 were not given. The *Panchanama* was not drawn up by the Circle Inspector in the presence of petitioners. It is lastly contended that the impugned orders are not legal and correct and deserves to be quashed and set aside.

7 Perused the documents filed on record and the impugned orders. A copy of the Government's map of entire village Dautpur is placed on record. It is contention of the petitioners that there is alternative road to reach to block No.131 towards south side. But as per village map, in fact there is a river. The authorized map does not show any sign of existence of alleged alternative road to respondent No.3, which is rightly held by respondent Nos.1 and 2 with the sound reasons.

8 Now, only question that remains before this Court is that whether the provisions of the Mamlatdars Courts Act, 1906 are applicable to the case in hand or not and whether those were followed or not. In the application filed before the Tahsildar by respondent No.3, it is not mentioned that the application is filed under the provisions of the Mamlatdars Courts Act, 1906 or as per Section 143

of the Maharashtra Land Revenue Code, 1966. The Tahsildar has proceeded to decide the matter as per Section 5 of the Mamlatdars Courts Act, 1906. Notice was issued to the petitioners. Their written statement / say was taken on record. Inquiry was conducted with the help of the Circle Inspector, Bhokardan, who visited to the disputed properties and drawn up the *Panchanama* in the presence of the Panchas and both sides. The *Panchanama* dated 08.07.2020 clarifies that petitioner No.1 Madan and other petitioners were present there. They submitted that it is only foot way and not cart way. The Circle Inspector reported that there is only way to proceed to block No.131 out of share of respondent No.3 and there is no any alternative way to proceed to the share in property block No.131, which is partly owned by respondent No.3.

9 It is well settled that procedures are handmade and subserve to enforce the substantive rights of the parties. Merely because the procedure is not followed as per Mamlatdars Courts Act, it cannot be held that the party concerned is not entitled for the legal relief and prevent mischief. Opportunity was given to the petitioners to submit their say. They attended the *Panchanama* drawn up by Circle Inspector. These principles of natural justice were followed by respondent No.1. The petitioner has contested the claim of respondent No.3 by opposing it. It is an admitted fact that block

No.131 was ancestral property of the ancestors of the petitioners and respondent No.3. It was partitioned between petitioner No.1 and respondent No.3 equally. Further alternative right of way as alleged by the petitioners is not proved by the petitioners. If there was any objection about not following of the procedure as per Mamlatdars Courts Act, petitioner would have raised that before the Mamlatdar during that proceedings. If it is not raised, it must be inferred that it is waived. The respondent No.3 is rustic villager. He applied before Tahsildar for relief of removal of obstruction to his right of way. The Mamlatdar followed the procedure, which was not objected at the earliest by the petitioners. They cannot raise such objections later on. *Panchanama* dated 08.07.2020 shows that they were present there and they are now denying that fact. No any prejudice is caused to the petitioners. They have not pointed out any such fact that grave injustice is caused to them only because the procedure prescribed under Sections 5, 7 and 8 of the Mamlatdars Courts Act, 1906 is not followed.

10 Therefore, on the technical ground justice cannot be denied and matter cannot be sent for relegation on such ground. Therefore, it is held that there is no substance in the grounds of objection raised in this writ petition. The impugned orders passed by respondent Nos.1 and 2 are not illegal either on law or on fact. The

petitioners failed to show illegality or perversity in these impugned orders to interfere in it. The argument of the learned counsel for the petitioners is, therefore, not acceptable in this regard. The writ petition, therefore, deserves to be dismissed. Hence, following order:-

ORDER

- I. The writ petition is dismissed. No costs.
- II. Rule discharged.

[SANJAY A. DESHMUKH, J.]

nga