

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 2090 OF 2020

Rohidas Rajaram Jadhav and Ors.

...Petitioners

Versus

Mohan Bandu Jadhav and Ors.

...Respondents

...

Mr. Prabhanjan Gujar, for Petitioner.

Mr. Dilip Bodake, Respondent Nos.1 to 4.

Mr. C.D. Mali, AGP for Respondent Nos.5 to 7.

...

CORAM : SANDEEP V. MARNE, J.

DATE : 10 OCTOBER 2023.

ORAL ORDER:

Rule. Rule is made returnable forthwith. With the consent of learned counsels appearing for the parties, petition is taken up for final hearing and disposal.

2. By this petition, Petitioners have challenged Judgment and order dated 03 February 2020 passed by SDO, Satara allowing Revision Application filed by the Respondents and setting aside the order passed by the Tehsildar on 02 May 2018 with further direction to the Petitioners to remove the obstruction created on land bearing Gat Nos.548A and 548B as well as on the boundary of Gat No.439.

3. I have heard Mr. Gujar, the learned counsel appearing for Appellants and Mr. Bodke, the learned counsel appearing for Respondents.

4. It appears that in pursuance of the Application filed by the Respondents before Tehsildar in the year 2015, Rasta Case No.12 of 2015 was registered. A Panchnama was on conducted on 26 August 2015 and basis thereupon, the Tehsildar proceeded to pass order dated 11 September 2015 allowing Application and directing the Petitioners to remove the obstruction created on land at Gat Nos.548A and 548B as well as on the boundary of the land bearing Gat No.439. Petitioners filed Revision Application before the SDO, who remanded the proceedings to Tehsildar. In remanded proceedings, a fresh Panchnama was conducted in the year 2017 and based on the same, Tehsildar passed order dated 21 May 2018 rejecting the Rasta Case. Respondents filed revision before SDO. It appears that SDO personally visited spot and prepared a fresh a Panchnama on 02 July 2018. He considered all the three Panchnama prepared in the year 2015, 2017 as well as his own Panchnama prepared in the year 2018 and proceeded to pass order dated 03 February 2020 allowing Revision Application and directing Petitioners to remove obstruction caused on the access road passing through land bearing Gat No.548A and 548B as well on the boundary of land Gat No.439.

5. It appears that in the second Panchnama conducted by the Tehsildar after the proceedings were remanded, two specific findings were recorded. Firstly, it was observed that there was no road passing through the land bearing Gat No.548A and 548B and there were crops standing in that land. The second finding was that the road was observed through the land bearing Gat No. 542 and 541 going towards the private crematorium. Tehsildar took note of these two factors and proceeded to pass order dated 21 May 2018 holding that no access road existing in land bearing Gat No.548A and 548B. He further held that the Respondents have an alternate road going towards Crematory passing through the Gat No.541 and 542.

6. When the proceedings were taken up in revision before the SDO, no doubt the SDO went out of way and visited land in question personally on 02 July 2018 with a view to verify whether there is indeed any access road passing through Petitioners' land and whether any obstruction to said access road was created. I have gone through the Panchnama drawn by the SDO on 02 July 2018. The SDO was required to deal with findings recorded by Tehsildar that there is existence of alternate road passing through Gat No.541 and 542 towards the private crematorium. Therefore, while preparing Panchnama on 02 July 2018, it was incumbent for the SDO to deal with this aspect. However, the entire Panchnama as well as the map annexed thereto does not show that this aspect has been dealt with in the Panchnama.

7. When SDO proceeded to pass order dated 03 February 2020, again this aspect of existence of alternate road passing through the land at Gat No.541 and 542 has been altogether ignored. The SDO compared Panchnama of the years 2015, 2017 for the purpose of arriving at a finding that Petitioners must have started taking crops on the road with a view to extinguish its existence. I do not find that the SDO had any material before him to record such a surmise. Though SDO has taken note of the finding recorded by the Tehsildar about existence of alternate road passing through the land bearing Gat No.542 and 541, he has not held the said finding of the Tehsildar to be erroneous. In the Panchnama conducted by him personally, he has not recorded any finding that such an alternative road is not in existence.

8. It must be borne in mind that the access road is sought for the villagers to visit the private Crematory. It is not even a public Crematory. Be that as it may, once Tehsildar arrived at a conclusion that villagers can access private Crematory through alternate access road passing through land bearing Gat No.542 and 541, coupled with the fact that existence of the road not being observed in the land of the Petitioners bearing Gat No.548A and 548B as well as on boundary of Gat No.547, there was no necessity for the SDO to pass an order that Petitioners must remove obstruction made to such non-existent road.

9. Considering the overall conspectus of the case, it is seen that villagers have alternate access road to visit the private Crematory. The order passed by the SDO dated 03 February 2020 is thus unsustainable. Writ Petition is accordingly succeeds. Order passed by SDO on 03 February 2020 is set aside and the order passed by Tehsildar on 21 May 2018 is upheld. With the above directions Writ Petition is **disposed of**. There shall be no order as to costs. Needless to observe that the parties would have the freedom to exercise their rights in civil proceedings and the observations made in this order shall not come in the way of decision of such civil proceedings.

(SANDEEP V. MARNE, J.)

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