

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

WRIT PETITION NO. 6021 OF 2022

Sushilkumar Chandrakant Kadam & ors. ...Petitioners
Versus
The Sub-Divisional Officer & ors. ...Respondents

Mr. Dilip Bodake, for the Petitioners.
Mr. Kishor Patil, i/b Mr. Shailesh Chavan, for Respondent
No.4.
Mr. S. D. Rayrikar, AGP for the State/Respondent Nos.1 and 2.

CORAM: N. J. JAMADAR, J.
DATED : 27th MARCH, 2023

JUDGMENT:-

1. Rule. Rule made returnable forthwith and with the consent of the learned Counsel for the parties heard finally.
2. This petition under Article 227 of the Constitution of India assails the legality, correctness and propriety of an order dated 10th January, 2022 passed by the Deputy Collector and Sub-Divisional Officer, Koregaon Division, Satara in MCA No.5 of 2021 under Section 23 of the Mamlatdar's Courts Act, 1906 ("the Act, 1906") whereby the revision application preferred by the petitioners against the order dated 3rd December, 2021 passed by the Tahsildar, Koregaon, in an application under Section 5 of the Act, 1906 came to be dismissed.

3. Agricultural lands of the petitioners and respondents are situated at village Khed. River Wangana runs North-South towards East of village Khed. The agricultural lands of the petitioners and respondents are situated towards East of the said river. The petitioners are holders of the agricultural land bearing Gut No.684. Whereas lands bearing Gut Nos.759, 751, 758, 723/1 and 723/3 are owned by respondent Nos.3 to 7. Respondent Nos.3 to 7 claimed a 12 feet wide road was laid to facilitate access to the various fields by public contribution. The petitioners allegedly obstructed the access to the said road by erecting a gate on the said road in Gut No.684.

4. Respondent Nos.3 to 8 thus approached the Mamlatdar under Section 5 of the Act, 1906 for removal of the obstruction to the access to respondent Nos.3 to 7's agricultural lands. It was, *inter alia*, alleged that the petitioners had obstructed the access by initially dumping the cement pipes and later on erecting a gate by means of cement poles and bamboo sticks.

5. The petitioners resisted the application by filing written statement.

6. A spot inspection was caused to be conducted. It was, *inter alia*, noted that there was a road running towards North from the western side of Gut No.687, 686, 685 and the said road

proceeded towards North through Gut No.684. On the western side of the said road the petitioners had blocked the access by erecting a gate like structure by means of cement poles and sticks. Beyond the said gate the said road led to a rivulet. After crossing the rivulet, the road was found leading to Gut No.751. There was a sugarcane crop in Gut No.684 and a well was also noticed. On the eastern side of the rivulet a road was found to have been laid by means of debris. Existence of the road was also noticed in between Gut Nos.764 and 771.

7. On the basis of the spot inspection report the Tahsildar was persuaded to return a finding that the petitioners had blocked access to the road by erecting a gate like structure. Road was noticed in Gut No.684 beyond the said structure up to rivulet which ran North-South. In Gut No.684 there was sugarcane crop. On the eastern side of the said rivulet towards Gut No.751 a road was found to have been laid. The Tahsildar thus concluded that the petitioners had obstructed the access in Gut No.684 only and the rest of the road was available and open for access. The Tahsildar was not persuaded to accept the contention on behalf of the petitioners that respondent Nos.3 to 7 had an alternate road to access their fields. Since the road was found to exist all along, the petitioners had no right to

cause obstruction thereto. Holding thus the application was allowed and the petitioners were directed to remove the obstruction and clear the road within a period of 15 days from the said order. The petitioners were further directed not to cause any obstruction to respondent Nos.3 to 7 in access to their respective fields.

8. Being aggrieved the petitioner preferred a revision application being MCA No.5 of 2021 before the Deputy Collector. By the impugned order the Deputy Collector was persuaded to dismiss the revision application. The Deputy Collector was of the view that the site inspection report clearly revealed that the petitioners had created obstacles in the access to the suit road by erecting a gate like structure. Thus the Tahsildar committed no error in directing the petitioner to remove the obstruction and clear the road.

9. Being further aggrieved, the petitioners have invoked the writ jurisdiction of this Court.

10. I have heard Mr. Bodake, the learned Counsel for the petitioners and Mr. Kishor Patil, the learned Counsel for respondent Nos.3 to 7. With the assistance of the learned Counsel for the parties, I have perused the material on record including the impugned order and the spot inspection report.

11. Mr. Bodake, the learned Counsel for the petitioners, took the Court through the spot inspection reports and the observations of the Tahsildar and Deputy Collector in the impugned order. It was submitted that in adherence to the impugned order the petitioners have removed the gate erected in Gut No.684. To the extent the impugned order directs the removal obstruction, the petitioners have now no subsisting grievance. However, the impugned order is being misconstrued to establish a new right of way where none existed. Laying emphasis on the observations in the spot inspection report, especially the fact that sugarcane crop was noticed on the eastern side of the rivulet in Gut No.684, Mr. Bodake urged with tenacity that the road exists up to the rivulet only and by taking undue advantage of the impugned order a new right of way is being sought to be created through the land of the petitioners.

12. To lend support to this submission Mr. Bodake invited the attention of the Court to the communication dated 10th May, 2022 addressed by the Circle Officer calling upon the petitioners to remove the crop standing in Gut No.684. The said communication, *inter alia*, records that while action to remove the obstruction was being undertaken on 10th May, 2022 it was noticed that on the eastern side of the rivulet sugarcane and

maze crops were found. The petitioners were thus directed to remove the said crops. This communication, according to Mr. Bodake, indicates that the impugned order is being misconstrued to establish a new right of way.

13. In opposition to this Mr. Patil, the learned Counsel for respondent Nos.3 to 7, submitted that the impugned orders do not warrant any interference in exercise of writ jurisdiction. Mr. Patil urged that after the impugned order was passed the petitioners had, in fact, instituted a suit in the Civil Court seeking injunctive reliefs. However, when the Civil Court by an order dated 30th March, 2022 declined to grant temporary injunction in Regular Civil Suit No.141 of 2022, the petitioners unconditionally withdrew the said suit on 26th April, 2022. Thereafter the petitioners have preferred this petition.

14. Mr. Patil further submitted that the fact that the petitioners had obstructed the road is rather indisputable. Spot inspection report clearly records that the petitioners had erected a gate like structure in Gut No.684 and prevented respondent Nos.3 to 7 and other adjoining landlords from approaching their fields. The fact that the petitioners had forcibly brought some portion of the road under cultivation can not be construed in favour of the petitioners as it would amount to putting a

premium on illegality. Therefore the petition deserves to be dismissed, urged Mr. Patil.

15. To begin with, the nature of the jurisdiction exercised by this Court under Article 227 of the Constitution of India. This Court is not sitting in appeal over the decision of the authorities below. It would be impermissible to delve into thickets of facts and substitute a decision for the view taken by the authorities below upon the appraisal of the facts. A finding of fact is not amenable to correction in exercise of writ jurisdiction unless the finding is such that the authority could not have arrived at such finding at all.

16. On the aforesaid touchstone, revering to the facts of the case, it is imperative to note that the factum of the existence of the road running through Gut No.684 (of the petitioners) at least up to the rivulet is incontrovertible. The petitioners concede that an unauthorized obstruction was caused by erecting a gate in Gut No.684. By the impugned order the said obstruction came to be removed. The petitioners now essentially assail the impugned order to the extent it directs the petitioners not to cause obstruction to respondent Nos.3 to 7's access to their fields through the road beyond the rivulet.

17. The submission of Mr. Bodake that the impugned order is being misconstrued to lay a new way does not merit acceptance. The very situation of the agricultural lands of the parties provides a complete answer to the submission sought to be canvassed on behalf of the petitioners. The land of respondent Nos.3 to 7 is located on the northern side beyond Gut No.684 of the petitioners. If the road in question was upto the rivulet only, the obstruction would not have caused any prejudice to respondent Nos.3 to 7 as they would not have been able to reach their fields on the eastern side of the rivulet. Conversely, the petitioners would not have blocked the access had it not been used to reach the lands beyond the agricultural land of the petitioners. Thus, the submission that the said road reached a dead end at the rivulet is unworthy of acceptance.

18. Moreover, there is material in the form of spot inspection report to show that the said road proceeds beyond the rivulet to the fields of respondent Nos.3 to 7. Existence of portions of the road was noted on the eastern side of the rivulet. In the circumstances, the authorities have committed no error in passing the impugned order directing the removal of obstruction and restraining the petitioners from causing further obstruction to respondent Nos.3 to 7's access to their respective lands.

19. Hence, no case for interference in exercise of writ jurisdiction is made out. Resultantly, the petition deserves to be dismissed. Thus, the following order:

: O R D E R :

- (i) The petition stands dismissed.
- (ii) Rule discharged.
- (iii) No order as to costs.

[N. J. JAMADAR, J.]