

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

WRIT PETITION NO. 7879 OF 2016

Ganpati Baji More & Anr.	...Petitioners
Versus	
Bhagwan Dhondiba Bhoite & Ors.13	...Respondents

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Mr. Mahindra B. Deshmukh for Petitioners.

Mr. Shivaji A. Masal, for Respondent Nos.1 to 11.

Mrs. V. S. Nimbalkar, AGP for Respondent Nos.12 to 14.

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CORAM	: SANDEEP V. MARNE, J.
RESERVED ON	: 27 SEPTEMBER 2023.
PRONOUNCED ON	: 05 OCTOBER 2023.

JUDGMENT:

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

2. By this petition, Petitioners challenge order dated 21 November 2014 passed by Tehsildar under Section 5 of the Mamlatdars Courts Act 1906 (**Act**) directing them to remove obstruction to access road on boundaries of Gat Nos. 124 and 142, village Lengre, Tal. Khanapur, Vita Dist. Sangali. Since Petitioners' Revision filed under Section 23(2) of the Act is rejected by the Sub-Divisional Officer, by

order dated 10 August 2015, that order is also under challenge in the present petition.

3. Mr. Deshmukh, the learned counsel appearing for Petitioners would submit that the application filed by the Respondents under Section 5 of the Act is barred by the provisions of Section 26 of the Act as previously instituted proceedings in Rasta Case no.17 of 2006 was rejected by Tehsildar by order dated 09 October 2006, whose order was upheld by Sub-Divisional Officer vide order dated 17 January 2008. That Rasta Case No.14 of 2013 instituted by Respondent leading to passing of impugned orders is for removal of obstruction in the same road involved in previous Rasta Case No.17 of 2006 filed by them. He would submit that having once rejected Rasta Case No.17 of 2006, the Tehsildar could not have entertained one more Rasta case in respect of same road as there is a specific bar under Section 26 of the Act. He would further submit that the application filed by Respondents in Rasta Case No.14 of 2013 was faulty and did not conform to the requirements of Section 7 of the Act. That therefore the application ought to have been rejected. He would further submit that petitioners have already allowed 7 feet wide road on Southern boundary and 10 feet wide road on Northern boundary of their land bearing Gat No.124 and that Petitioners cannot be forced to grant multiple access roads from his land.

4. *Per contra* Mr. Masal, the learned counsel appearing for Respondent Nos.1 to 11 would oppose the petition submitting that the earlier Rasta Case No.17 of 2006 was in respect of another road. That the

said case was filed in the year 2006 as Petitioners had created obstruction for grape cultivation. The obstruction now created is of different nature. He would further contend that obstruction created by Petitioners has been proved in Panchnama. He would therefore submit no interference is warranted in the concurrent findings recorded by Tehsildar and SDO.

5. I have also heard Mrs. V. S. Nimbalkar, learned AGP for state.

6. After having considered submissions canvassed by learned counsels appearing for the parties, the moot question that arises for consideration is whether the proceedings filed by Respondent No.1 to 11 in the form of Rasta Case No.14 of 2013 were maintainable in view of dismissal of earlier Rasta Case No.17 of 2006. While Petitioners contend that both the proceedings are for same road, it is contention of Respondent Nos.1 to 11 that the two proceedings are in respect of different roads and different nature of obstruction. To my mind, the nature of obstruction is irrelevant. What is relevant is whether the two proceedings are in respect of same access road or not.

7. Perusal of order dated 09 October 2006 passed by Tehsildar in Rasta Case No.17 of 2006 would indicate that the said proceedings were filed complaining obstruction created by Petitioners to the alleged access road in North-South direction towards Eastern boundary of Gat No.124. In the present proceedings bearing Rasta Case No.14 of 2013 as well, the complaint is with regard to obstruction created on alleged access road on Eastern boundary of Gat No.124. I have also perused maps

prepared while deciding both the Rasta Cases, which are placed on record. Such maps would also indicate that both the proceedings are in respect of same road in North-South direction towards Eastern side of land bearing Gat No.124.

8. The Tehsildar has not considered this aspect while passing order dated 21 November 2014. When the attention of Sub-Divisional Officer was invited to this aspect in Revision filed under Sub-section 2 of Section 23 of the Act, the Sub-Divisional Officer has recorded a finding that the factual position in two Rasta Cases is distinct. This finding is recorded by observing that Rasta Case No.17 of 2006 was in respect of entire road passing through Gat No.124 and the obstruction was by digging furrow/channel for grape plantation. The Sub-Divisional Officer has observed that in current Rasta Case No.14 of 2013, the obstruction is on account of constructing a bund on the access road. Thus, the finding of the Sub-Divisional Officer about difference in two Rasta Cases is essentially premised on the nature of obstruction and not on similarity of the access road. I have already observed, the nature of obstruction is irrelevant. If different kinds of obstructions are created at different times in respect of same access road, affected parties cannot be permitted to file multiple proceedings if such obstructions are in respect of same road.

9. Once Rasta Case No.17 of 2006 was rejected by holding that the Applicants therein were not affected by obstruction created on alleged access road in north-south direction on eastern boundary of Gat No.124, creation of obstruction of a different nature would not create any new

cause of action for Respondent Nos.1 to 11 to institute one more Rasta case in respect of same alleged access road. The upshot of rejection of Rasta Case No. 17 of 2006 is that Respondent Nos. 1 to 11 could no longer claim any access road in north-south direction on the eastern boundary of land bearing Gat No. 124.

10. In my view therefore Rasta case No. 14 of 2013 filed by Respondent Nos.1 to 11 was not maintainable and was barred by principle of *res judicata*. The Tehsildar and Sub-Divisional Officer have erred in not appreciating the said principle. The impugned orders passed by the Tehsildar and Sub-Divisional Officer are thus unsustainable.

11. Writ Petition is accordingly allowed. The orders dated 21 November 2014 passed by Tehsildar in Rasta Case No.14 of 2013 as well as order dated 10 August 2015 passed by Sub-Divisional Officer in Rasta Revision No.02 of 2015 are set aside.

12. Rule is made absolute in above terms.

SANDEEP V. MARNE, J.

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