

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.1880 OF 2018

Gajanan Sukhdeo Load,
 Aged about 67 years,
 Occupation-Agriculturist,
 R/o. Narkhed, Tq. Nandura,
 District-Buldhana.

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Petitioner

.. Versus ..

1. The Sub-Divisional Officer,
Malkapur, Dist. Buldhana.
2. The Mamlatdar/Tahsildar,
Nandura, Tq. Nandura,
Dist. Buldhana.
3. Bhagwat Manohar Waghmare,
Aged 36 years, Occ. Agriculturist,
4. Pramod Manohar Waghmare,
Aged 31 years, Occ. Agriculturist,

Both R/o. Narkhed, Tq. Nandura,
 District-Buldhana.

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Respondents

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Shri A.V. Bhide, Advocate for the petitioner,
 Shri A.A. Madiwale, AGP for respondent nos.1 and 2,
 None for respondent nos.3 and 4.

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CORAM : MRS. VRUSHALI V. JOSHI, J.
 DATE : 23.02.2023.

ORAL JUDGMENT

Rule. Rule made returnable forthwith. Heard the matter finally at the stage of admission. Though the respondent nos.3 and 4 are served, none appears for both of them.

2. The petitioner has challenged the order passed by the Sub-Divisional Officer, Malkapur dated 24.11.2017. The petitioner is the owner of land Gat No.86 at village Narkhed, ad-measuring 1 H 11 R. The petitioner has purchased the land from one Shriram Bhikaji Chandane on 30.03.1993. In said sale deed, he has specifically mentioned that the petitioner had a cart way from inner side of western boundary of other portion of Gat No.86, which was owned by the previous owner Tulshiram Nimbaji. From the date of purchase of the land, the petitioner was using the said cart road. Respondent nos.3 and 4 purchased the said portion of land in Gat No.86. There is Nala in between Shivdand and Gat No.85 to 89. Respondent nos.3 and 4 obstructed the said cart way of the petitioner. Therefore, the petitioner has filed the application before the Mamlatdar Court under Section 5 of the Mamlatdar Courts Act and sought injunction against respondent nos.3 and 4. The Naib Tahsildar inspected the spot and prepared the spot inspection report. After recording the evidence of the parties and after considering the pleadings, the Mamlatdar Court passed the order. The

order was passed in favour of the petitioner which was challenged by the respondent nos.3 and 4 before the Sub-Divisional Officer and the Sub-Divisional Officer has allowed the said revision. Being aggrieved by the said order, the petitioner has filed the present petition.

3. The learned counsel for the petitioner has stated that though the Mamlatdar Court has recorded the evidence of both the parties but it is not appreciated while passing the order. Though the order is in favour of the petitioner the evidence is not discussed and the contents about use of said land by the owner of the field which is mentioned in the sale deed is also not considered by both the courts, the learned counsel requested to remand the matter to the Mamlatdar Court to consider it afresh by setting aside the order passed by the Sub-Divisional Officer and order of Mamlatdar Court.

4. Learned Assistant Government Pleader has stated that Sub-Divisional Officer has specifically mentioned that in the spot inspection report, the way is not mentioned. After considering the spot inspection report, the Sub-Divisional Officer has passed the order which is correct and prayed to dismiss the petition.

5. The petitioner has filed this petition as the Sub-Divisional Officer had rejected the order passed by the Mamlatdar Court, which is in favour of the petitioner. As the respondent nos.3 and 4 obstructed his right of way from the dhura of Gat No.90, he has approached the

Mamlatdar Court. After going through the spot inspection report prepared by the Talathi and Circle Officer, it appears that there is no way from Gat No.90, but after going through the map, it appears that there is no alternate approach road to Gat No.86 which is owned by the petitioner. Though the evidence is recorded but it is not discussed by the Mamlatdar Court as well as the Sub-Divisional Officer. Therefore, considering the contention of the petitioner that the matter may be remanded back to the Mamlatdar Court for its fresh consideration, the following order is passed :

6. The order dated 24.11.2017 passed by the Sub-Divisional Officer is set aside and order dated 1.4.2017 passed by the Mamlatdar Court is set aside. The matter is remanded back to the Mamlatdar Court.
7. The Mamlatdar Court is directed to dispose the matter by issuing fresh notice to the parties and after appearance of the parties, the Mamlatdar Court is directed to decide the matter within a period of two months.
8. Both the parties are directed to appear before the Mamlatdar Court on **03.03.2023**.
9. The petition is allowed and disposed of accordingly.