

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

Writ Petition (WP) No. 1889 of 2022

Rahul S/o Kailash Chandge and another

Versus

Ganesh S/o Namdeo Shingne and others

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri K.S.Narwade, Advocate for the petitioners.

Shri J.M.Jaltare, Advocate for the respondent nos. 1 to 3.

Ms. Shamsi Haider, AGP for the respondent nos. 4 to 5.

CORAM : ANIL S. KILOR, J.

DATED : 18th APRIL, 2023.

Heard.

2. In this writ petition, the order passed by the Sub Divisional Officer, Sindkhed Raja, Dist. Buldhana dismissing the appeal and confirming the order of the Malmatdar passed under Section 5 of the Mamlatdar Courts Act, 1908 (in short hereinafter referred as "Act, 1908"), allowing the application moved by the respondent nos. 1 to 3 for removal of obstruction created by the petitioners in the approach way of the respondent nos. 1 to 3 from the field Gat No. 111 to

Gat No. 112, vide order dated 4th January, 2022, is under challenge.

3. The petitioners owned survey no. 111 to the extent of 9.5 hector out of which 0.40 R is owned by the respondent nos. 1 to 3, which they purchased in the year 1993.

4. It is the case of the respondent nos. 1 to 3 who approached to the Malmatdar Court under Section 5 of the Act, 1908 for removal of obstruction alleged to have created by the petitioners, that they have an approach way from field Gat No. 111 to field Gat No. 112 and the same has been obstructed by the petitioners. After filing of the application under Section 5 of the Act, 1906, the spot inspection was carried out by the Circle Inspector who has recorded the findings in favour of the respondent nos. 1 to 3. Even in the spot inspection report prepared by the Police Patil, he has held in favour of the respondent nos. 1 to 3 about the existence of alleged approach way.

5. Accordingly, Tehsildar allowed the application vide order dated 29th October, 2020, which was challenged in appeal before the Sub Divisional Officer, who has upheld the order of the Tehsildar and dismissed the appeal vide order dated 4th January, 2022,

the same is the subject matter of the present writ petition.

6. Shri Narwade, learned counsel for the petitioners submits that there are three alternate approach ways available to the respondent nos. 1 to 3 and one of them is directly from the main road, Devulgaon Raja to Sindkhed Raja, to his field gat no. 111. He, therefore, submits that the impugned order is erroneous as both the authorities below have not considered the said fact.

7. He further argues that, the Circle Inspector has relied upon the statement of adjoining land owners who were not cross-examined and no such opportunity was given to the petitioners. He, therefore, submits that reliance placed upon such statements by the Sub Divisional Officer, is contrary to law.

8. On the other hand, Ms. Haider, learned Additional Government Pleader supports the impugned order and submits that both the authorities below have passed the orders after carrying out spot inspection. Thus, learned Additional Government Pleader submits that there is no merit in the present writ petition and the same may be dismissed.

9. Shri Jaltare, learned counsel for the respondent nos. 1 to 3 reiterates the submission of the

learned Additional Government Pleader and prays for dismissal of the present writ petition.

10. In the light of rival contentions of both the parties, I have perused the impugned order.

11. Admittedly, after filing of the application under Section 5 of the Act, 1908, the Circle Inspector carried out the spot inspection and has held that the road as claimed by the respondent nos. 1 to 3 / original applicant nos. 1 to 3 is in existence and the same findings were recorded by the Police Patil in the panchanama. Thus, there are two reports which support the case of the respondent nos. 1 to 4 / original applicants.

12. In the circumstances, even if the statement of adjoining land owners are ignored on the ground that, the petitioners were not granted opportunity to cross-examine them, still both the reports supports the case of the respondent nos. 1 to 3 / original applicants.

13. It is pertinent to note that the petitioners have not brought any contrary evidence on record. The petitioners have not also filed the statement of adjoining land owners in support of their case.

14. In the circumstances, in absence of any material to show that there is no approach way in existence as claimed by the respondent nos. 1 to 3 /

original applicants, I do not find any merit in the present writ petition. Accordingly, the writ petition is dismissed.

15. At this stage, learned counsel for the petitioners has pointed out that as directed by this Court vide order dated 6th April, 2022, the petitioners had deposited of Rs.20,000/- in this Court to show their *bona fide*. He prays for withdrawal of the said amount.

16. Considering the nature of dispute, I am of the opinion that the permission should be granted to the petitioners to withdraw the amount. Accordingly, the petitioners are permitted to withdraw the amount deposited in this Court along with interest, if any, accrued thereon.

[ANIL S. KILOR, J.]

SACHINDANAND
K NAIR

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