



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

WRIT PETITION NO. 1335 OF 2022

(RAJENDRA SHAMRAOJI BANSOD..VS.. SUB-DIVISIONAL OFFICER, CHANDUR RAILWAY & OTH.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri S.I.Ghatte, Advocate for Petitioner.
Shri Shyam Bissa, A.G.P. for Respondent Nos.1 & 3/State.
Shri C.A.Babrekar, Advocate for Respondent No.2.

CORAM : ANIL S. KILOR, J.
DATED : DECEMBER 19, 2023.

1. Heard.
2. The order dated 11/08/2021 passed by the Sub-Divisional Officer, upholding the order passed by the Mamalatdar rejecting the application of the petitioner, seeking direction to the respondent No.2 to remove obstruction created in the approach road to his field Gut/ Survey No.207/1, is under challenge in this writ petition.
3. Admittedly, the Tahsildar on filing of the application by the petitioner under Section 5 of the Mamalatdars Courts Act, 1906 (hereinafter referred to as "the Act of 1906") for removal of the obstruction in his approach way to his field, called the spot inspection report from the Talathi/ Circle Officer who has accordingly submitted his report on 18/11/2014.

4. The report specifically mentions about existence of the approach way and erection of fencing on the said approach way by the respondent No.2. The report also says that the respondent No.2 is the owner of Gut / Survey No.18/3 and 207/1 and he clubbed both the lands and erected the fencing from all the four sides of the land and thereby he created obstruction in the approach way in existence.

5. The order of the Tahsildar dated 06/04/2016 and the order of the Sub-Divisional Officer dated 11/08/2021 show that both the authorities have not considered the said spot inspection report in right perspective and rejected the application of the petitioner under Section 5 of the Act of 1906 on erroneous ground.

6. Shri Babrekar, learned counsel for the respondent No.2 submits that the application filed under Section 5 was not supported by an affidavit. He, therefore, prays for dismissal of the writ petition.

7. After going through the record it is evident that though the point of limitation was not raised by the respondent No.2 or it was not the ground on which the Tahsildar rejected the application of the petitioner, the Sub-Divisional Officer has rejected the appeal on the said ground. The findings recorded by the Sub-Divisional Officer about the limitation is not based on any record but the findings are based on presumption.

8. Furthermore, as I have observed that both the orders are contrary to the findings recorded by the Circle Officer in the spot inspection report. Hence, I have no hesitation to hold that the Mamalatdar as well as Sub-Divisional Officer both have committed error in not considering the spot inspection report while deciding the application of the petitioner.

9. In that view of the matter, the only option left with this Court is to remand the matter back to the Tahsildar to decide the same afresh after taking into consideration the spot inspection report, which categorically and specifically says that *Shiv Road*, which goes to the field of the petitioner, has been closed down by the respondent No.2. Accordingly, I pass the following order:

- i) The Writ Petition is partly allowed.
- ii) The order dated 11/08/2021 passed by the Sub-Divisional Officer, Chandur Railway and order dated 06/04/2016 passed by respondent No.3-Tahsildar, Nandgaon Khandeshwar are hereby quashed and set aside.
- iii) The matter is remanded back to the Tahsildar for deciding the same afresh after hearing both the parties.

- iv) The Tahsildar shall seek compliance of Sections 7 to 12 of the Act of 1906 if he is of the opinion that no such compliance is made by the petitioner while filing the application under Section 5 and after such compliance, the Tahsildar shall proceed with the matter and decide the same in accordance with law.

The Writ Petition is disposed of accordingly.
No order as to costs.

JUDGE

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