

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

WRIT PETITION NO. 7159/2018

SHAMRAO S/O BABURAO SONNAR

VS

*STATE OF MAHARASHTRA, THROUGH DEPUTY COLLECTOR, MALKAPUR AND
OTHERS*

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

Court's or Judge's Order

Mr. C.P. Chandurkar, Advocate for the petitioner
Mr. H.D. Dubey, AGP for respondent nos. 1 and 2
Mr. Abhijit Deshpande, Advocate for respondent nos. 3 to 7

CORAM : A. S. KILOR, J.

DATED : 26/06/2023

Heard.

2. After failing at all the stages right from the Tahasildar to the Deputy Collector in the proceedings filed under Section 5 of the Mamlatdar Court Act, 1906 (for short the "Act of 1906") by the respondent nos. 3 to 7, the petitioner has filed the present petition.

3. The respondent nos. 3 to 7 approached to the learned Tahsildar under Section 5 of the Act of 1906 claiming the cartway to the field of the petitioner. Accordingly, the spot inspection was carried out and it was noticed that cartway was available for the respondent nos. 3 to 7, which has been obstructed by the petitioner. Thus, on the basis of spot inspection report, the learned Tahsildar

directed the petitioner to remove the obstruction in the pathway of the respondent no. 3 to 7 to the extent of 8 ¼ feet. The order of the learned Tahsildar dated 09.05.2018 has carried in an appeal before the learned Deputy Collector who upheld the order of the learned Tahsildar by rejecting the revision application vide order dated 31.08.2018 which is impugned in the present writ petition.

4. The learned Counsel for the petitioner submits that there is no cartway but, it is a pathway, which the respondent nos. 3 to 7 have been using. It is further submitted that the respondent nos. 3 to 7 have wrongly claimed the cartway and it was erroneously granted by the learned Tahsildar and the learned Deputy Collector. It is submitted that though, there is no evidence produced by the respondent nos. 3 to 7 that the cartway was of the width of 8 ¼ feet, the learned Tahsildar directed to remove the obstruction to the extent of the width of 8 ¼ feet. He, therefore, submits that the impugned order is illegal in law.

5. Mr. Deshpande, the learned Counsel for the respondent nos. 3 to 7, pointed out that not only in the spot inspection the pathway as claimed by the respondent nos. 3 to 7 was found in existence but, the brother of the vendor of the petitioner has also in his affidavit admitted the fact that the respondent nos. 3 to 7 were using the cartway from his brother's filed. He, therefore, submits that as there is ample

evidence available on record the learned Tahsildar and the learned Deputy Collector rightly directed the petitioner to remove the obstruction of pathway of the respondent nos. 3 to 7 and prays for dismissal of the present writ petition.

6. The learned AGP reiterated the submission of the learned Counsel for the respondent nos. 3 to 7 and submits that no illegality has been committed by the learned Mamlatdar Court as well as the learned Revisional Court in directing the petitioner to remove the obstruction in the pathway of the respondent nos. 3 to 7.

7. In the light of the rival contentions, I have perused the record and the impugned orders.

8. From the record, it appears that the spot inspection was carried out by the learned Mamlatdar and while carrying out the said spot inspection, the petitioner was present. It has come in the spot inspection report that the pathway is in existence and it has been obstructed by the petitioner. Further, the brother of the vendor of the petitioner has admitted the fact of having of approachway in existence and use of it by the respondent nos. 3 to 7.

9. In the circumstances, I do not find any illegality committed by the learned Mamlatdar and the learned Deputy Collector in issuing the direction under Section 5 of the Act of 2006 against the petitioner as regards the

removal of the obstruction. However, it was never the case of the respondent nos. 3 to 7 that the pathway was of the width of 8 ¼ feet. There is no finding recorded by the learned Tahsildar on what basis, he arrived at the conclusion that the pathway is of the width of 8 ¼ feet. Accordingly, I passed the following order:

(I) The writ petition is disposed of.

(II) The order of the learned Tahsildar is modified to the extent that the petitioner shall not obstruct the approachway of the respondent nos. 3 to 7 to the extent of the actual width required for the cartway.

JUDGE