

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 8487 OF 2022

1. Sukhnandan S/o. Vitthal Tidke,
Aged about 62 years, Occupation:
Agriculturist
2. Pravin S/o. Sukhnandan Tidke,
Aged about 36 years, Occupation:
Agriculturist
3. Vijay S/o. Sukhnandan Tidke,
Aged about 32 years, Occupation:
Agriculturist.

All R/o. Deoulkhed (Shahapur)
Tah. Khamgaon, District : Buldhana.

.... **PETITIONERS.**

// VERSUS //

1. Deputy Collector/ Sub Divisional
Officer, Khamgaon, Tah. Khamgaon,
District : Buldhana.
2. Naib Tahsildar, Khamgaon,
Tah. Khamgaon, District : Buldhana.
3. Sunil S/o. Murlidhar Ferang,
Aged about 28 years, Occupation :
Agriculturist,
4. Supaji S/o. Laxman Dhole,
Aged about 42 years, Occupation :
Agriculturist,

Nos. 3 and 4 R/o. Shahapur, Tah.
Khamgaon, District : Buldhana.

.... **RESPONDENTS.**

Shri A.M.Tirukh, Advocate for Petitioners.
Ms Shamsi Haider, A.G.P. for Respondent Nos.1 & 2.
Shri V.S.Kukday, Advocate for Respondent Nos.3 & 4.

CORAM : ANIL S. KILOR, J.
DATED : APRIL 18, 2023.

ORAL JUDGMENT :

1. Heard.
2. **RULE.** Rule made returnable forthwith. Heard finally by consent of the learned counsel for the parties.
3. The present matter pertains to right of way under the Mamalatdar's Courts Act, 1906 (hereinafter referred to as "the Act of 1906"). The Mamalatdar rejected the application moved by the respondent Nos. 3 and 4 under Section 5 of the Act of 1906 for removal of obstruction vide order dated 14/03/2022 on the ground of limitation. Whereas, the Sub-Divisional Officer vide order dated 16/11/2022 allowed the revision application and thereby directed the petitioner to remove the obstruction in the approach way of the respondent Nos. 3 and 4. The said order dated 16/11/2022 passed by the Deputy Collector is under challenge in this writ petition.

4. It is argued by the learned counsel for the petitioners that the Sub-Divisional Officer has not considered the point of limitation in the right perspective and reversed the finding recorded by the Tahsildar on the point of limitation without any cogent reason. It is further submitted that the approach way is granted from southern side, whereas, it is not in existence. He, therefore, submits that the impugned order is erroneous and is liable to be quashed and set aside.

5. On the other hand, Shri Kukday, learned counsel for the respondent Nos.3 and 4 points out from paragraph No.3 of the application filed before the Mamalatdar Court that there is no delay in approaching the Mamalatdar. It is pointed out that the approach way, which the respondent Nos. 3 and 4 and their forefathers were using, was obstructed by the petitioners and on resistance by the respondent Nos. 3 and 4 the petitioners agreed to permit the respondent Nos. 3 and 4 to use the approach way from the Northern *dhura*. He further submits that, subsequently, even that approach way was also obstructed and accordingly the application was filed and there is no delay in filing the proceedings under Section 5 of the Act of 1906.

6. After going through the reply filed by the petitioners to the said application, particularly to paragraph No.3, it is evident that there is no specific denial to the contentions raised in paragraph No.3 by the respondent Nos.3 and 4. In that view of the matter, I am of the opinion that there is no delay caused in approaching the Mamalatdar in this matter.

7. As far as the matter on merit is concerned, there are two maps, one drawn by the Circle Officer and another by the Naib Tahsildar, at the time of spot inspection. Admittedly, in the map drawn by the Circle Officer there is no approach way shown from Southern side, whereas, in the map prepared by the Naib Tahsildar the approach way is shown from the Southern side. Even there is variations in the maps regarding the area where the obstruction is created by the petitioners. In these circumstances, because of the variations in both the maps it is difficult to determine the issue about the approach way involved in the present matter.

8. The Sub-Divisional Officer, vide impugned order, has directed to remove the obstruction allegedly created by the petitioners from Southern *dhura* and as per the map prepared by the Naib Tahsildar.

9. Thus, considering the variations in both the maps prepared by two different authorities, I am of the opinion that it would be in the interest of both the parties to remand the matter to Mamalatdar and direct the Mamalatdar to carryout spot inspection in the presence of both the parties and decide the application afresh without going into the issue of limitation. Accordingly, I pass the following order:

- i) The writ petition is partly allowed.
- ii) The impugned order dated 16/11/2022 passed by Deputy Collector/ Sub-Divisional Officer, Khamgaon and order dated 14/03/2022 passed by Naib-Tahsildar, are hereby quashed and set aside.
- iii) The matter is remanded back to the Tahsildar for deciding the application filed by the respondent Nos. 3 and 4, afresh.
- iv) The petitioner and respondent Nos.3 and 4 shall appear before the Tahsildar on 26/04/2023 at 12:00 noon.
- v) The Tahsildar shall visit the spot and prepare spot inspection report along with map, in presence of both the parties, before deciding the application.

- vi) The Tahsildar is directed to decide the application, under Section 5 of Mamalatdar's Courts Act 1906, within one month from the date of appearance of the parties.
- vii) Till decision by the Tahsildar, the respondent Nos. 3 and 4 are permitted to use the approach way as observed by the Sub-Divisional Officer in his order dated 16/11/2022.

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

JUDGE

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