



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.356 OF 2023**

Dagdoba s/o Raosaheb Kale,
Age: 59 years, Occu: Agriculture,
R/o. Mardasgaon, Tq. Pathari,
Dist. Parbhani.

..Petitioner

Versus

1. Haribhau s/o Bhagwan Shinde,
Age: Major, Occu: Agriculture,
2. Sudam s/o Shivram Kadam,
Age: Major, Occu: Agriculture,
3. Satish s/o Durgadas Pedge,
Age: Major, Accu: Agriculture
- 3A. Smt. Shobha wd/o Satish Pedge,
Age: 52 years, Occu: Agriculture;
- 3B. Balabhau s/o Satish Pedge
Age: 32 years, Occu: Agriculture;
- BC. Uddhav s/o Satish Pedge,
Age: 30 years, Occu: Agriculture;
- 3D. Yogita d/o Satish Pedge,
Age: 27 years, Occu: Agriculture;

All R/o: Mardasgaon, Tq.Pathari,
Dist. Parbhani.

4. Parmeshwar s/o Tatyaraao Shelke,
Age: Major, Occu: Agriculture,
5. Dipak s/o Sandipan Shelke Kale
Age: Major, Occu: Agriculture,

All R/o: Mardasgaon, Tq. Pathari,
Dist. Parbhani.

6. The Tahsildar, Pathri,
A/p & Tq. Pathri, Dist. Parbhani.

7. The Sub Divisional Officer,
A/p & Tq. Pathri, Dist. Parbhani. ..Respondents

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Mr. S. T. Shelke, Advocate for Petitioner.

Mr. A. V. Lavte, AGP for Respondents-State.

Mr. M. S. Bhosale, Advocate for Respondent No.1.

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CORAM : S. G. CHAPALGAONKAR, J.

DATED : 22nd JULY 2024.

JUDGMENT:-

1. Rule. Rule made returnable forthwith. By the consent of the parties, matter is taken up for final hearing at the stage of admission.

2. The petitioner impugns order dated 31.03.2022 passed by the Tahsildar, Pathri-respondent no.6 as well as order dated 23.11.2022 passed by the Sub Divisional Officer, Pathri-respondent no.7.

3. The petitioner contends that he is owner and possessor of land bearing Gut No.164 within the limits of Grampanchayat Mardasgaon, Tq. Pathri, District Parbhani. The land bearing Gut No.160 originally owned by Smt. Shantabai Kale. She had instituted proceeding under Section 143 of the Maharashtra Land Revenue Code (for short 'MLR Code') against the petitioner seeking approach road to her field. The said application was allowed by learned Tahsildar vide order dated 12.06.2017 and she was granted way from common Bandh between Gut Nos.161 and 164 and thereafter, from common Bandh of Gut Nos.164 and 159. The petitioner had assailed the said order before the Sub Divisional Officer, Pathri. The said Appeal was allowed and order of Tahsildar was quashed and set aside. Thereafter, Smt. Shantabai Kale filed Regular Civil Suit No.3/2018 before the Civil Judge, Junior Division at Pathri claiming relief of perpetual injunction

that cart way to approach Gut No.160 shall not be obstructed by the petitioner and others. She had also filed application seeking temporary injunction. In pursuance of the said suit and application, the Court Commissioner's report was called by the Civil Court and after considering such report, application for temporary injunction was rejected vide order dated 03.07.2018.

4. Thereafter, Smt. Shantabai Kale sold out her land from Gut No.160 to sons of respondent no.1-Haribhau, who owned the land from Gut No.159. The respondent no.1-Haribhau filed application invoking Section 5 of the Mamlatdar's Courts Act alleging that his approach road from Gut No.159 has been obstructed by the petitioner. The learned Tahsildar acceded the prayer and restrained the petitioner and others from obstructing respondent no.1-Haribhau Shinde from using cart way from boundaries of Gut Nos.164 and 171, 158 and 159. The petitioner filed Appeal under Section 23(2) of the Mamlatdar's Courts Act before the Sub Divisional Officer, Pathri. However, the said Appeal came to be dismissed.

5. Mr. Shelke further submits that respondent no.1-Haribhau owns land from Gut No.159 and recently he has purchased land from Gut No.160 from Smt. Shantabai. He would submit that previously Smt. Shantabai had instituted proceedings under Section 143 of the MLR Code against the petitioner asking for road from common Bandh of Gut No.164. Her prayer was rejected. Even, she had instituted Suit alongwith Application for temporary injunction. The Civil Court observing that Smt. Shantabai has alternate road, rejected her prayer. The respondent no.1-Haribhau has stepped into the shoes of Smt. Shantabai in view of sale deed dated 08.04.2019 and asked for similar prayer and sought for

removal of obstruction. Mr. Shelke would submit that there is nothing on record to show that customary access road as claimed was available. In that view of the matter, the impugned orders are liable to be quashed and set aside.

6. Per contra, Mr. Bhosale, learned Advocate appearing for the respondents submits that the petitioner had obstructed the existing cart way. On application of the petitioner, the learned Tahsildar caused spot inspection and after examining the report submitted by the Circle Officer, the Tahsildar has granted prayer of the petitioner directing respondents to remove obstruction. The said order is confirmed by the Sub Divisional Officer. The learned Sub Divisional Officer has observed that tonch map, prima facie, shows existence of such customary way. The concurrent findings of the facts recorded by the Authorities need not be disturbed.

7. Having considered submissions advanced on behalf of the learned Advocates appearing for the respective parties, it is apparent that respondent no.1 owns agriculture land from gut No.159 and recently he has purchased land from Smt. Shantabai Kale from Gut No.160. Previously Smt. Shantabai had initiated proceedings under Section 143 of the MLR Code seeking grant of cart way from boundary of Gut No.164. Although such prayer was initially granted, the order was set aside by the Sub Divisional Officer. Smt. Shantabai Kale then instituted Suit bearing Regular Civil Suit No.3/2018, wherein prayer was made for grant of temporary injunction against the petitioner and others from obstructing her way from the boundaries of Gut Nos.164 and 159 to approach Gut No.160. The report of Court Commissioner was solicited in the Suit, which records presence of bushes, stem of jujube tree and babool tree on common Bandh of Gut Nos.164 and

159. Further the presence of drainage was noted on common Bandh of Gut Nos.164 and 171. It is, therefore, evident that cart way never existed as claimed by the respondents.

8. Perusal of the order passed by the Mamlatdar shows that the spot inspection was carried. However, details of such spot inspection are not recorded in the order. It appears that, only because other respondents accepted contentions of respondent no.1, the order is passed directing removal of obstruction. The said order is confirmed by the Appellate Authority. The conclusion drawn by the Mamlatdar appears to be without in depth enquiry. Further as rightly pointed out by Mr. Shelke, Smt. Shantabai had also claimed for similar way invoking provisions of Section 143 of the MLR Code and Suit. In both the proceedings, conclusion is drawn that no such way can be granted. In that scenario, there is nothing to establish foundational facts for exercising jurisdiction under Section 5 of the Mamlatdar's Courts Act or to uphold the contentions of the respondents about use of customary cart way. However, common Bandh can always be used as pathway and there cannot be obstructions to such use. Consequently, Writ Petition deserves to be allowed with aforesaid clarification. Hence, the following order:

ORDER

- a. Writ Petition is partly allowed.
- b. The impugned order dated 31.03.2022 passed by the Tahsildar-respondent no.6 as well as order dated 23.11.2022 passed by the Sub Divisional Officer-respondent no.7 are hereby quashed and set aside. However, the respondents shall be at liberty to use common Bandh as pathway and the petitioner shall not obstruct them for such use.

- c. Writ Petition stands disposed of in aforesaid terms.
- d. Rule is made absolute in above terms.

(S. G. CHAPALGAONKAR)
JUDGE

Devendra/July-2024