



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.735 OF 2024

1. Kaka S/o Bhaurao Goje,
Age:62 years, Occ. Agriculture,
2. Narayan S/o Bhaurao Goje,
Age: 67 years, Occ. Agriculture,
3. Raosaheb S/o Bhaurao Goje,
Age: 69 years, Occ. Agriculture,
4. Dnyaneshwar S/o Bapurao Goje,
Age: 35 years, Occ. Agriculture,
5. Aruna W/o Bhausahab Goje,
Age: 55 years, Occ. Agriculture,
6. Annasaheb S/o Bhausahab Goje,
Age: 27 years, Occ. Agriculture,
7. Sudam S/o Bapurao Goje,
Age: 47 years, Occ. Agriculture,

All Residents of Kumbhephal, Village Kumbhephal,
Tq. & Dist. Chhatrapati Sambhajinagar. ..Petitioners

Versus

1. Subhash S/o Agaji Goje,
Age: 65 years, Occ. Agriculture,
2. Sachin S/o Subhash Goje,
Age: 38 years, Occ. Agriculture,
3. Sharad S/o Subash Goje,
Age: 34 years, Occ. Agriculture,

All Residents of Kumbhephal,
Village Kumbhephal,
Tq. & Dist. Chhatrapati Sambhajinagar.

4. The Sub-Divisional Officer,
Sub-Divisional Office,
Chhatrapati Sambhajinagar.

5. The Tahsildar,
Tahsil Office,
Chhatrapati Sambhajinagar.

..Respondents

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Mr. P. D. Jarare, Advocate for the Petitioners.

Mr. S. B. Jadhav, AGP for Respondent Nos.4 and 5.

Mr. M. D. Narwadkar, Advocate for Respondent Nos.1 to 3.

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CORAM : S. G. CHAPALGAONKAR, J.

DATED : 06th AUGUST 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 petitioners impugn order dated 24.11.2023 passed by Sub Divisional Officer-respondent no.4, thereby allowing Revision Application against order dated 14.07.2023 passed by Tahsildar, Chhatrapati Sambhajinagar in exercise of powers conferred under Section 5(1)(2) of the Mamlatdar's Courts Act, directing removal of obstruction on customary way from Gut No.119 towards common bandh of Gut No.120.

3. Mr. Jarare, learned Advocate appearing for the petitioners submits that petitioners had approached the Mamlatdar under Section 5 of the Mamlatdar's Courts Act claiming customary way from Gut No.119 of village Kumbhephal, Tal. and Dist. Chhatrapati Sambhajinagar. It is specifically pleaded in application that petitioners were using way from Gut No.119 to approach Gut No.120. However, respondent nos.1 to 3 have obstructed such use. As such, they are unable to cultivate their land. In pursuance of such application, spot panchanama was

drawn on 26.05.2022. Consequently, Mamlatdar recorded finding that customary way was in existence from Gut No.119 and passed order dated 14.07.2023, thereby granting free access from Gut No.119 to approach Gut No.120 to the petitioners. However, respondent no.4-Sub Divisional Officer, in Revision filed by respondent nos.1 to 3, quashed and set aside the order of Tahsildar. Mr. Jarare would invite attention of this Court to the khasara patrak of land Survey No.49, which records existence of cart way. He would invite attention of this Court to certain photographs indicating existence of cart way, which was subsequently destroyed by ploughing land. He would point out that there is no alternate way to the petitioners to enter their land. Mr. Jarare also points out that the respondents approached Civil Court vide RCS No.1670/2022 seeking decree of perpetual injunction against the petitioners as regards to the customary way. He would, therefore, urge to quash and set aside the impugned order and restore the directions given by Tahsildar.

4. Per contra, Mr. Narwadkar, learned Advocate appearing for respondent nos.1 to 3 submits that there is nothing on record to depict existence of customary way from Gut No.119 as claimed by the petitioners. The learned Tahsildar had passed order merely relying upon spot panchanama carried by Circle Officer. However, nothing is discernible from said panchanama to substantiate claim of the petitioners. He would submit that although prayer for grant of temporary injunction is rejected by the Trial Court in Suit filed by respondent nos.1 to 3, the substantive Suit is still pending. The conclusion in the Suit would bind the parties. Therefore, no case is made out to cause interference in Writ jurisdiction of this Court.

5. Having considered submissions advanced, apparently petitioners filed application dated 11.05.2022 stating that they had

customary way from Gut No.119 to approach their land in Gut No.120 that has been obstructed by respondent nos.1 to 3. They claim that they do not have alternate way to approach their land. Accordingly, they prayed for intervention of Mamlatdar for removal of obstruction made by respondents in Gut No.119, so that they can use customary way. Perusal of application submitted by petitioners would show that no particulars of cause of action are pleaded. Even necessary details of customary way are not specified. In pursuance of aforesaid application, Circle Officer drawn panchanama dated 26.05.2022. However, said panchanama is in form of statements of respective land holders, but sans requisite details of actual position on the spot, particularly as regards to the existence of customary way or obstruction by respondents as claimed by the petitioners. The learned Mamlatdar relying upon aforesaid panchanama drawn conclusion regarding existence of customary way and passed order directing respondents to make a way from Gut No.119 to approach Gut No.120 in favour of the petitioners.

6. Apparently, the proceeding is taken up under Section 5 of the Mamlatdar's Courts Act, which envisaged powers in favour of Tahsildar/Mamlatdar to remove obstruction in use of customary way. The scheme of Act also indicate that cognizance of obstruction created within a period of six months can be taken by the Mamlatdar. It was, therefore, obligatory on the part of the petitioners to establish existence of customary way and obstruction created by the respondents within a period of six months before the date of institution of proceeding under Section 5 of the Mamlatdar's Courts Act. Apparently, Tahsildar is required to see that application is presented as per procedure prescribed and verified by respective parties. It must indicate the details as regards to the existence of customary way and period of its use. It must also

clarify cause of action to file the proceeding. If application is not in proper format, it is duty of Mamlatdar to get it rectified after recording verification of applicants.

7. Perusal of proceeding before the Mamlatdar depicts that no such procedure has been followed in the present case. It is expected that Mamlatdar shall himself cause spot inspection. However, in the present case he relied upon spot inspection of Circle Officer. As indicated above, the spot inspection is in the form of recording statements and does not throw light on actual position at spot regarding use of customary way or obstruction by respondents. The Mamlatdar failed to record the statements of parties and adjacent land holders or appreciate documentary evidence in the form of map, record of village panchayat, record of survey office, so that appropriate findings of facts can be recorded. The learned Sub Divisional Officer merely observing that proceeding is pending before the Civil Court, set aside the order of Tahsildar without taking care to see that lis is decided on merit.

8. In that view of the matter, it would be appropriate to relegate the parties to the Mamlatdar by setting aside order passed by the Sub Divisional Officer as well as Mamlatdar with further direction to consider issue afresh and decide the application filed by petitioners by following procedure prescribed under Sections 7 to 15 of the Mamlatdar's Courts Act. To make substantial justice, the petitioners may be given opportunity to amend application incorporating requisite details supported by their affidavits. The Tahsildar/Mamlatdar shall thereupon decide to take up proceeding either under Section 5 of the Mamlatdar's Courts Act or under Section 143 of the Maharashtra Land Revenue Code and pass appropriate orders. In that view of the matter, following order is passed:

ORDER

- a. Writ Petition is partly allowed.
- b. The impugned order dated 24.11.2023 passed by Sub Divisional Officer-respondent no.4 and order dated 14.07.2023 passed by Tahsildar, Chhatrapati Sambhajnagar-respondent no.5, are hereby quashed and set aside.
- c. The matter is remitted back to the Tahsildar/Mamlatdar for fresh consideration. The petitioners shall be at liberty to amend application and incorporate pleadings in support of their claim.
- d. Parties shall appear on 26.08.2024 before the Tahsildar/Mamlatdar, who shall endeavour to decide proceeding within a period of three months thereafter.
- e. The Tahsildar/Mamlatdar shall take appropriate call to consider and decide proceeding either under Section 5 of the Mamlatdar's Courts Act or under Section 143 of the Maharashtra Land Revenue Code by granting opportunity of hearing to both the parties.
- f. Writ Petition is disposed of.
- g. Rule is made absolute in above terms.

(S. G. CHAPALGAONKAR)
JUDGE