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WP-851-2024

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 851 OF 2024

Tilottama W/o Pralhad Sonwane and Anr.

...Petitioners

VERSUS

The Sub-Divisional Officer,
Pachora Divison Pachora,
Dist. Jalgaon and Ors.

...Respondents

Mr.Sanket Kulkarni i/by Mr. Govind R. Ingole for Petitioners.

Smt. A. S. Deshmukh AGP for Respondent No.1 and 2.

Mr.V. R. Dhorde, Advocate for Respondent No.3 to 6.

CORAM : KISHORE C. SANT, J.
RESERVED ON : 12th NOVEMBER 2024
PRONOUNCED ON : 12th DECEMBER 2024

PC :-

1. Heard the learned Counsel for the parties.
2. The present Writ Petition arises out of proceedings under Section 5 of the Mamlatdar's Courts Act, 1906 (for short "the said Act"). The petitioners are the original plaintiffs in the said proceedings. The Respondent Nos.3 to 6 are the original Respondents. Respondent Nos.1 and 2 are the authorities who passed the orders in the said proceedings. The learned Tahsildar, Pachora, Dist. Jalgaon had allowed the plaint of

the petitioners whereas the learned Sub-Divisional Officer, Pachora Division, Pachora quashed and set aside the order dated 22nd August 2022 passed by the learned Tahsildar in Rasta Case No.6 of 2022. The petitioners thus aggrieved by an order dated 4th December 2023 passed by the learned Sub-Divisional Officer, Pachora in RTS Revision No.95 of 2022 have approached this Court. They prayed to remove obstructions caused by Respondent Nos.3 to 6 and to given an access to the petitioners to approach their field.

3. The fact, in short, giving rise to the petition are as below:-

The petitioners are the owners of the land Gut No.64 admeasuring 61R in Village Sarola (Bk.) Tq. Pachora, Dist. Jalgaon. The Respondent Nos.4 and 5 are the owners of Gut No. 66-1. The Respondent No.6 is having land Gut No.66-2. Respondent Nos.3 and one Banabai Patil, are the owners of land Gut No.65. The plaintiffs have the access to go to their land from land Gut Nos.66 and 65. There is a reference of this road in the sale-deed by which the petitioners purchased the land. However, on 2nd February 2022 at around 10:00 a.m. they found that the

respondents have caused obstructions on the said road by ploughing the land. With this grievance, they approached the Tahsildar by filing a plaint.

4. The Respondents appeared and resisted the claim. It is their case that no such road is in existence. There is alternative road. They thus oppose the application.

5. The learned Tahsildar visited the spot and drawn the panchnama on 5th May 2022. In the panchnama it is found that, at land Gut No.66 there is access seen only of 5 to 10 feet and thereafter, there is no way found. A panchnama is also drawn. The petitioners filed an affidavit of one Surendra S. Patil, who stated that there is road in existence to go to land Gut No.64 from land Gut Nos.65 and 66 on the north side of land Gut No.64.

6. The Tahsildar on hearing the parties and going through the material found that there is no alternative way in existence. There are some marking seen on earlier easmentary road which is seen to have been obstructed by the respondents. He also recorded that in the sale

deed No.2378 of 2005 dated 9th June 2005 in favour of the petitioners, there is reference of easementary road. On this reasoning, the learned Tahsildar by its judgment and order dated 22nd August 2022 allowed the application directing the Respondents to remove the obstructions from land Gut Nos.66 and 65 on the north side.

7. The respondent Nos.3 to 6 challenged this order before the learned Sub-Divisional Officer, Pachora by filing revision bearing RTS Revision No.95 of 2022, raising various grounds as the plaint was not filed in format. There is no verification. Factual grounds are taken about the panchnama, inspection by the Tahsildar etc. It is mainly contended that in the panchnama itself, it has come that after 5 to 10 feet distance from land Gut No.66, no road is seen.

8. The learned Sub-Divisional Officer entertained the revision. He considered the panchnama. He accepted that after 5 to 10 feet from land Gut No.66, there is no easementary road seen and held that there was no such road in existence. It is observed that, the panchnama appears to be drawn in absence of the respondents as no signatures of

the parties are appearing on the same. In the sale-deed it is not mentioned that there is no any other alternative way in existence as recorded in the panchnama. There is mention that there are no signs of the existence of a road seen. Thus on this, he allowed the revision by its judgment and order dated 4th December 2023. The petitioners are thus before this Court.

9. The learned Advocate Mr.Kulkarni appearing for the petitioners vehemently argued that the Tahsildar had rightly considered the panchnama and had passed the order. The learned Sub-Divisional Officer without any material has disturbed well reasoned order passed by the Tahsildar. The learned Sub-Divisional Officer has passed an order on extraneous consideration. There was no challenge to the panchnama. Initially, no ground of alternative road was taken. The learned Sub-Divisional Officer failed to appreciate the contents of sale deed dated 9th June 2005. The said road is in use, since the petitioners purchased the said land. He thus prays that the SDO's order be quashed and set aside and confirmed the order passed by the Tahsildar.

10. Learned Advocate for the Respondents Mr.Dhorde vehemently opposed the petition. He submits that from the panchnama, it is not recorded that there was a road found after Gut No.66 or any traces were seen suggesting existence of the road. The learned Sub-Divisional Officer has rightly considered that in the panchnama it is not mentioned that there is no alternative way to approach land Gut Nos.65 and 64. The plaint was not in format as expected under Mamlatdar's Courts Act. There was no proper verification. He thus supports the order passed by the learned Sub-Divisional Officer and prays for rejection of writ petition.

11. Learned AGP also supports the order passed by the learned Sub-Divisional Officer.

12. From the order of learned Sub-Divisional Officer it is seen that, the learned Sub-Divisional Officer has mainly considered the panchnama and observed that there is no mention of existence of alternative road. It is observed that no road was seen after 5 to 10 feet from Gut No.66. The panchnama was drawn in the absence of the parties. In the sale-deed of

the petitioners though there is a reference of road, however, no specific direction etc. are given about the said road. The said sale-deed is between two parties. The vendor is not a party to the proceedings. When the sale deed is between two parties, the recitals or the clauses in the said sale-deed would not bind the other parties.

13. Looking at the panchnama, it is seen that there is clearly a mention that the road is seen 5 to 10 deep from Gut No.66 towards Gut No.64 and thereafter, it is ploughed. The said road is not shown going to any other place than the land of the petitioners. This itself would indicate that earlier there was road even further. It is not expected in the sale-deed that every detail of width dimension etc. of the access would be given. When the land is purchased, it is always purchased by looking as to whether there is sufficient access or not. The land is purchased in 2015. The application is filed in 2022. Naturally, only after obstruction. As regards observation that the panchnama appears to have been drawn in absence of the parties, does not hold any water as that was not a ground raised by the respondents. The learned Sub-Divisional Officer has thus gone through only on two aspects that no road is seen after 5 to

10 feet and secondly that in the sale-deed there are no specifications given about the road. The Sub-Divisional Officer has passed an order on extraneous consideration. Certainly, the present case it appears that he has travelled beyond the scope of revision and has passed the impugned order.

14. For all these reasons, this Court finds that the impugned order deserves to be quashed and set aside by confirming the order dated 22nd August 2022 passed by learned Tahasildar in Rasta Case No.6 of 2022.

Hence the following order:

ORDER

- (i) Writ Petition is allowed.
- (ii) No order as to costs.

[KISHORE C. SANT, J.]

1. At this stage, the learned Advocate for the Respondents prays for stay to the effect and execution of this order.
2. Request is vehemently opposed by the learned Advocate for the petitioners.

3. However, considering the nature of dispute, the effect of this order shall be in force for a period of four weeks from today.

[KISHORE C. SANT, J.]