



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

WRIT PETITION NO.1745 OF 2023

1. Ashok Sahebrao Waman
Age: 48 years, Occ: Agri. & Service,
2. Sahebrao Madhav Waman
Age: 80 years, Occ: Agri.,
3. Babasaheb Sahebrao Waman
Age: 50 years, Occ: Agri.,
4. Kacharu Dhanaji Waman
Age: 65 years, Occ: Agri.,
All R/o - Nandurnimbadaitya,
Tq. Pathardi, Dist. Ahmednagar. ..Petitioners

Versus

1. The state of Maharashtra
Through its Secretary
Department of Revenue Mantralaya Mumbai,
2. The Collector,
Ahmednagar.
3. The Sub Divisional Officer,
Sub Division, Pathardi,
Tq. Pathardi, Dist. Ahmednagar.
4. The Tahsildar
Tahsil office, Pathardi,
Tq. Pathardi, Dist. Ahmednagar.
5. The Circle Officer
Koradgaon Circle, Tq. Pathardi,
Dist. Ahmednagar.
6. Raghunath Rambhau Wagh
Age: 70 years, Occ: Agri.,
7. Babasaheb Kacharu Dahiphale
Age: 42 years, Occ: Agri.,

8. Sadashiv Narayan Wagh
Age: 34 years, Occ: Agri.,
9. Damodhar Kisan Fajage
Age: 71 years, Occ: Agri.,
10. Sheshrao Kisan Fajage
Age: 70 years, Occ: Agri.,
11. Narayan Haribhau Wagh
Age: 62 years, Occ: Agri.,
12. Suryabhan Haribhau Wagh Deceased,
Through his LR's
- 12-A. Bhagwat Suryabhan Wagh,
Age: 50 years, Occ: Agri.,
- 12-B. Arjun Suryabhan Wagh
Age: 48 years, Occ: Agri.,
- 12-C. Lahanu Suryabhan Wagh
Age: 45 years, Occ: Agri.,
- 12-D. Kalabai Suryabhan Wagh
Age: 65 years, Occ: Agri.,
13. Vimal Aakur Wagh
Age: 45 years, Occ: Agri.,
14. Ganesh Uddhav Wagh
Age: 28 years, Occ: Agri.,
15. Namdeo Govind Wagh
Age: 80 years, Occ: Agri.,
16. Bhimrao Vishwanath Fajage
Age: 48 years, Occ: Agri.,
17. Vithoba Devsthan Daityanandur Vahivatkar
Govind Trimbak Joshi
Age: 80 years, Occ: Agri.
18. Aadinath Narayan Wagh
Age: 39 years, Occ: Agri.,

19. Shivaji Aashru Sanap
Age: 65 years, Occ: Agri.,
20. Manik Aashru Sanap
Age: 63 years, Occ: Agri.,
All R/o - Nandurnimbadaitya,
Tq. Pathardi, Dist. Ahmednagar. ..Respondents
(Resp. Nos.6 to 20 Orig. Respondents.)

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Mr. Y. V. Kakde, Advocate for Petitioners.

Mr. A. S. Shinde, AGP for Respondent Nos.1 to 5.

Mr. K. D. Mundhe, Advocate for Respondent Nos.6 to 11, 12B, 13 to 15 and 17 to 20.

Mr. Y. S. Choudhari, Advocate for Respondent No.16.

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CORAM : S. G. CHAPALGAONKAR, J.
DATED : 19th JUNE 2024.

JUDGMENT:-

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

2. The petitioners impugned the judgment and order passed by the S.D.M., Pathardi dated 01.02.2023 in RTS Revision No.297/2021, thereby confirming the judgment and order in Vahivat Case No.36/2022 dated 21.09.2022 passed by the learned Tahsildar, Pathardi.

3. Mr. Kakde, learned Advocate appearing for the petitioners submits that respondent nos.6 to 20 had instituted proceedings under Section 5(2) of Mamlatdar Courts Act, 1906 (for short 'the Act') contending that they are the owners of the lands bearing Gut No.516, 518, 519, 520, 532/1, 532/3, 533, 544, 545, 546, 547, 548, 542, 543, 552/1, 552, 553, 541, 555, 556, 561, 568 and 558. They were using customary way passing from Gut No.527 and 528, which has been closed by the petitioners by putting barbed wire

fence. The petitioners opposed the contentions of respondents and denied the existence of any such customary way or obstruction at the hands of the petitioners. However, the learned Tahsildar allowed the application directing the removal of the obstruction i.e. fencing/compound and making way to the respondents for the use of customary way. The petitioners filed Revisions before the Sub Divisional Officer at Pathardi. However, the same is mechanically dismissed, thereby confirming the order of the Tahsildar dated 21.09.2022.

4. Mr. Kakde would assail the impugned orders firstly on the ground that the proceeding is barred by limitation. He urges that on the basis of fictitious cause of action, Suit has been instituted, which is evident from the documents filed by the petitioners before court. He would further submit that the Tahsildar failed to follow the prescribed procedure in conduct of the proceeding. The requisite issues have not been framed. The findings are not recorded in consonance with the pleadings and material. He would further submit that although the prayer in the petition was limited for removal of the obstruction, the learned Tahsildar granted Gadi Rasta, which is beyond his jurisdiction. To buttress his submissions he relies on the judgments of this Court in case of *Vishnu Sukhdev Ghanvat and Others Vs. Collector, Ahmednagar and Others*¹, *Karbhari Raibhan Thete and Others Versus Additional Collector, Aurangabad and Others*², *Tarabai Ravsaheb Chaudhari and Others Versus State of Maharashtra and Others*³, *Jagdish Shriram Dhande Vs. Ramchandra Chinduji Dhande and Others*⁴ and unreported judgment in case of *Uttam S/o Yadav Bansode and*

¹ 2017 (1) Mh.L.J. 811.

² 2022 DGLS (Bom.) 1682.

³ 2022 DGLS (Bom.) 1807.

⁴ 2020 (2) Bom. C.R. 122.

Anr. Vs. The Additional Collector, Ahmednagar and Ors.
dated ***10.03.2022*** in ***Writ Petition No.1211/2020***.

5. Per contra, Mr. Kartik Mundhe, learned Advocate appearing for the respondents submits that the petitioners created obstruction by making barbed wire fencing on 08.06.2022. The customary way was in existence since long and same had been used to approach Gut No.541, 541, 556, 557, 555, 554 and 561. However, the petitioners raised obstruction on Western side of Gut No.528. Therefore, respondents were required to approach the Mamlatdar invoking jurisdiction under Section 5(2) of the Act. He would submit that in pursuance to the proceeding initiated by the respondents, a spot panchanama alongwith map has been drawn, which clearly depicts existence of customary way that has been obstructed by petitioners. By inviting attention of this Court to the map attached with the panchanama, he would point out that the obstruction created by the petitioners has been marked during spot inspection.

6. Mr. Shinde, learned AGP placed original file of the proceeding and submits that during the pendency of this petition, this Court passed an order dated 04.05.2023 and called upon Talathi to submit the report as regards availability of access to the lands of the respondents. Accordingly, the Talathi has submitted a report indicating obstruction of the fencing and difficulties faced by the respondents to approach their lands.

7. Having considered submissions advanced and on perusal of the record tendered into service by the respective parties, it can be noticed that the respondents have initiated proceeding under Section 5(2) of the Act. Perusal of the plaint clearly shows that the cause of action dated 08.06.2022 is pleaded, when the customary

way has been obstructed by petitioners by raising barbed wire fencing. Respondents approached Mamlatdar Court on 29.06.2022 i.e. within 21 days i.e. within the statutory period of limitation. However, Mr. Kakde, learned Advocate appearing for the petitioners by inviting attention of this Court to the N.C.R. No.651/2021 dated 21.06.2021, registered with Police Station Pathardi submits that petitioners had made complaint against the respondents that they were attempting to create unauthorized way from his field and on obstruction, they raised assault on petitioner. He would, therefore, submit that the obstruction, if any, has been caused way back on 18.06.2021. Consequently, the proceeding initiated before Mamlatdar on 29.06.2022 is barred by limitation. However, on perusal of the contents of NCR it is evident that no fencing was erected by that time, although some sort of resistance at the hands of the petitioners for user of the way is discernible. Resultantly, there is no substance in the contentions of the petitioners that fictitious cause of action has been raised to bring proceeding within the period of limitation.

8. So far as second contention raised on behalf of the petitioners that the procedure has not been followed by the Tahsildar in conduct of the proceeding in terms of the Act, perusal of the order passed by the Tahsildar shows that the issues have been specifically framed including issue of limitation and findings are recorded on each of the issue. No specific instance of violation of procedural aspect has been brought to the notice of this Court. The record submitted before this Court shows that the spot panchanama has been drawn, which is supported by the spot map. No serious disputes as regards to its contents has been raised. Perusal of the map clearly depicts existence of the customary way from the Waman Vasti along Gut No.528, which proceeds towards

South. The obstruction created by fencing is clearly marked in the map. Certain photographs are produced before this Court depicting fencing raised by the petitioners. Both the authorities have concurrently found existence of customary way that has been blocked by the obstruction created by the petitioners and directed removal of the same and restrained the petitioners from causing interference in use of the same. The findings of the fact arrived by both the authorities are based on material on record.

9. So far as reliance of the petitioners on the judgment of this Court in case of ***Vishnu Sukhdev Ghanvat and Others*** (supra) is concerned, it specifies that the provision of Sections 19 and 5(3) of the Act provides for limitation of six months for initiating proceeding from the date of cause of action. As discussed above and taking into account the date of cause of action indicated in the plaint and supporting material, there is no difficulty to affirm the findings recorded by the authorities to hold that the proceeding is instituted within a limitation period. So far as reliance of the petitioner on the judgment of this Court in cases of ***Karbhari Raibhan Thete and Others, Tarabai Ravsaheb Chaudhari and Others, Jagdish Shriram Dhande*** and ***Uttam S/o Yadav Bansode*** (supra), it has been specifically held that the plaint has to be filed in the manner prescribed by Section 10 of the Act and procedure contemplated under Section 11 of the Act required to be followed. In the present case, there is nothing to infer that any procedural aspect has not been complied or fundamental flaw as regards to the procedural aspect is caused.

10. Resultantly, the petitioners cannot draw any support from the law laid down by this Court in the aforesaid judgments. Consequently, no case is made out to interfere in the Writ

jurisdiction of this Court under Article 227 of the Constitution of India. Hence, Writ Petition stands dismissed.

11. Rule is discharged.

(S. G. CHAPALGAONKAR)
JUDGE

Devendra/June-2024