



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

957 WRIT PETITION NO. 2530 OF 2022

SARJAN REALTITIES LTD THROUGH AUTHORIZED PERSON
MANOJ SUDHAKAR BORSE

VERSUS

THE TAHSILDAR SAKRI AND OTHERS

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Advocate for the Petitioner : Mr. Temkar Rajendra K.

AGP for Respondents/State : Mr. K.S. Patil

Advocate for Respondents : Mr. S.V. Suryawanshi h/f Mr. Patil
Pramod D.

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CORAM : KISHORE C. SANT, J.

DATE : 3rd SEPTEMBER, 2024.

PER COURT :

1. Heard the parties. With the consent of the parties the petition is taken up for final disposal.
2. The petitioner Company has approached this Court challenging the judgment and order passed by the learned SDO, Dhule dated 19.03.2020, rejecting the Revision Application No.84 of 2018 and confirmed the order dated 19.04.2018 passed by the Tahsildar Sakri. It is directed to remove obstruction caused to the petitioner by it and allow respondents to use easementary way.

3. The case in short is that the respondent Nanhu is having land Gut No. 261/2 in Village Bhamer, Tq. Sakri. The present petitioner purchased few lands in the village and installed solar panels for generation of electricity. Since the Company purchased various lands they joined all lands together and erected Solar Panels. An access which was available to the said respondent was thus stopped by the Company. Respondent thus appeared learned Tahsildar by filing application stating that his right for access and way that passes through Gut No. 261/2 be made available by removing obstructions by the Company. It is the case of the Company that there is no such road in existence. It is stated that the Company has given alternative way after the raising wall fencing of 3 mtrs. width on the eastern side. This road was specifically made available to the adjoining land owners to avoid dispute over land and an access. As on the date no excess is claimed by respondent No. 3.

4. Learned Tahsildar conducted inquiry after hearing the parties and visiting spot and held that an access which was already there is closed by the petitioner Company and allowed the application. Learned SDO confirmed the said order. Thus,

the petitioner Company is before this Court.

5. Learned Advocate for the petitioner vehemently argued that the Company has made a road on the eastern side of their property. The said road is of 3 meters width, which is specifically created for the adjoining land owners. Both the authorities failed to consider this aspect. Both the authorities have not considered the village map etc. In the village map no such road is seen as demanded by the original applicant. He lastly submitted that if the matter is remanded back the petitioner can lead evidence before the Mamlatdar's Court in support of his case. The similarly situated agriculturists had also filed applications under same proceedings before the Tahsildar, whereas the Tahsildar has rejected those applications, considering that there is other alternative way. The said findings were confirmed.

6. Learned Advocate for Respondent No. 3 on the other hand opposed the petition vehemently stating that sufficient opportunities were given to the petitioner to put up his case. The learned Tahsildar has gone through the entire record

produced before him and thereafter a conclusion is drawn after the site visit, wherein he himself has personally visited the site. The findings of the Tahsildar are confirmed by the SDO. Now this Court need not go into the question of facts and prays for rejection of the petition.

7. Learned AGP also supports the impugned judgment and adopted the argument of respondent No. 3.

8. Parties have also relied upon the following judgments:

a. **Jorge Alexandre Cruz Lourenco Vs. Lucas Fernandes (since deceased) and Others - 2016 (5) Mh.L.J. 95.**

b. **Sanjay Annaji Pohokar Vs. Shriramchandra Samaj Seva Samati Bramhanwada (Kasba) and Others - 2022 (2) Mh.L.J. 41**

c. **U.P. State Sugar Corporation Ltd. Vs. Dy. Director of Consolidation and Others - (2002) 2 SCC 572,**

9. While considering the above judgments, this Court finds that the learned Tahsildar has visited the spot on 21.02.2018. The spot was inspected in the presence of both the

parties. There are documents on record in the form of 7/12 extract, village map and 4 boundaries and photographs etc.

10. The petitioner has given earlier statement before the Land Record Officer. As per the statement he denied the existence of the road. The Company has left 3 ft. wide road for the agriculturists. The respondents are asking for creation of new road. The Tahsildar, however, specifically observed that it is the case of the petitioner that 3 ft. wide road is left open for the agriculturists and no evidence is produced on record inspite of several opportunities given in support of this. It is further observed that there fencing is made on the foot way, which clearly shows that an easementary right is obstructed. The Tahsildar has also recorded specific dates giving details of hearing and allowed the application.

11. From the judgment of learned SDO it is seen that the learned SDO has also perused the record. Learned SDO has also observed that no evidence is produced by the petitioner Company to show that an alternative way is available.

12. On going through the judgments, it is clearly seen

that sufficient opportunities were given to the petitioner Company to produce on record material documents to show that there is alternative way in existence. In spite of several chances no evidence is produced before the Court. So far as considering the parameters and interference are concerned, this Court has gone through the judgments relied upon by respondent No. 3.

13. In the case of **Jorge Alexandre Cruz** (supra) the provisions of transfer of property Act and the Easementary Act and the scope for interference in the said finding under Article 227 of the Constitution of India are considered. In that case there was a dispute between the land owner and a tenant in respect of road, way/access to the tenanted premises. The concurrent findings were recorded by both the authorities, that no alternative way/road is in existence. This Court has held that in view of findings, the findings could not be said to be perverse or arbitrary. The said finding cannot be interfered in exercise of supervisory jurisdiction under Article 227 of the Constitution of India.

14. In **Sanjay Annaji Pohokar** (supra), the Division

Bench of this Court has held that the finding of fact recorded by the Tribunal cannot be re-opened and nor record be re-appreciated.

15. In the case of **U.P. State Sugar Corporation Ltd** (supra) the Hon'ble Apex Court held that the concurrent finding of fact in revisional Court need not be disturbed while exercising writ of jurisdiction under Article 226 of the Constitution of India and 115 of the Act.

16. Considering above judgments, this Court has to consider as to whether case is made out to call for interference in the findings of facts.

17. So far as the judgments of the petitioner side are concerned the learned Advocate has relied upon the following judgments :

**(a) Sudhir Yashwant Dhangade Vs. Ankush
Kashiram Bole and Ors. - 2019 (1) ALL MR 825.**

18. This Court has observed that though no ground is raised before the Mamlatdar's Court or before the learned SDO, still the said ground can be raised in Writ Petition when it does

not require determination of facts. The reliance of the learned Advocate for the petitioner on these judgments in the Court is misplaced. In the present petition the question about the acceptance of access is a question of fact.

19. So far as judgments of the Tahsildar in other cases are concerned, on going through the judgments in the Vahivat Case No. 44 of 2018, this Court finds that the judgment is not useful to the petitioner firstly because this case is independent of the present case and secondly for the reason that the applicants therein are owners of different lands therefore, the same need not be considered.

20. No case is made out to show that the authorities have committed any jurisdictional error or legal error. No question therefore, arises to remand the matter to the authorities.

21. Considering the submissions, judgments relied by of the parties, this Court finds that no case is made out calling for any interference. The Writ Petition is, therefore, dismissed. No order as to the costs.

22. At this stage the learned Advocate for the petitioner prays for continuation of interim relief, which is in operation. Learned Advocate for the Respondent has objected for the same. As there is interim relief since 2022, the same is continued for eight weeks from today.

(KISHORE C. SANT)
JUDGE

mahajansb/