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

**WRIT PETITION NO. 10756 OF 2021
WITH
WRIT PETITION NO. 10769 OF 2021**

Balaji Kushendra Kamble and others.
Versus
The State of Maharashtra and others.

...
Mr. G.J. Kore, Advocate for the petitioners.
Mr. V.M. Jaware, AGP for respondent Nos. 1 to 3
Mr. R.K. Kute, Advocate for respondent No.4
Respondent Nos. 5 and 6 served.

CORAM : S.G. CHAPALGAONKAR, J.

DATE : 1ST JULY, 2024.

ORDER :-

1. The petitioners approached this Court under Article 227 of the Constitution of India, impugning order dated 30.11.2019 passed by Additional Collector, Osmanabad in RTS Revision No. 2019/RTS/143, thereby upsetting order dated 30.6.2018 passed by Tahsildar, Lohara in proceeding No. 2018/Jamabandi/ROR-06, granting customary way to the petitioners from common bandh of Survey No. 93 and 95.

2. Mr. G.J. Kore, learned advocate for the petitioners submits that petitioners holds agriculture lands in Survey No. 93, 95 and 95 at village Nagur, Taluka Lohara, District Osmanabad. They were using customary way that passes from the Bandh of Gat No. 93 and 95 from South to North. However, respondent Nos. 4 and 5 obstructed said way

in the month of June, 2016. Consequently petitioners moved applications before the Tahsildar seeking removal of obstructions. Accordingly, proceeding under Section 5 of the Mamlatdar Courts Act, 1906 was initiated. The Spot panchanama was drawn in the presence of the witnesses. A sketch map is made in tune with facts gathered during spot inspection. After hearing all concerned, the learned Tahsildar arrived at the conclusion that the customary way has been obstructed by the respondents and directed for removal of such obstruction with further direction restraining the respondents from obstructing petitioners. However, by the impugned order, the learned Additional Collector set aside order of the Tahsildar and issued altogether different directions.

3. Per contra, Mr. R.L. Kute, learned advocate for respondent Nos. 5 and 6 points out that the application tendered by the petitioners nowhere depicts actual cause of action and existence of customary way. Informal applications were filed. The procedure contemplated under Section 7 to 15 of the Mamlatdar Courts Act was not followed. As such, illegal order was passed by the Tahsildar which has been rightly quashed and set aside by the Additional Collector vide impugned order dated 30.11.2019. Hence, no interference is warranted.

4. Having considered the submissions advanced, it can be observed that the applications tendered by the petitioners were not in specific format nor does contain the requisite details supported by verification. The original file of the proceeding taken by the Tahsildar nowhere shows that the verification statement of the petitioners was recorded to ascertain the correctness of the contentions raised in their application.

5. Apparently, spot panchanama was carried on 25.1.2017 by the Circle Officer Mapni, Taluka Lohara, which depicts that the alleged customary way from Bandh of survey No. 93 and 95 could not be seen on the spot. Similarly, such way is not depicted in the village map. It is observed that there are 3 electric poles on said Bandh and petitioners were using a way from Survey No. 99, 93, 89 which has been now obstructed by Piraji Bandu Bargal owner of Survey NO. 93. The report dated 31.1.2017 suggests that the obstruction created by Piraji Bandu Bargal needs to be cleared. However, it was suggested to create a cart road from Survey No. 93 and 95 in the interest of justice of the applicants.

6. The learned Tahsildar observed that although path way is discernible from Survey No. 93 and 95, cart road could not be spotted as claimed and therefore, such road needs to be created. Consequently, Tahsildar passed order granting cart way from Bandh of Survey No. 93 and 95.

7. The Additional Collector, while considering the challenge to the order passed by the Tahsildar, rightly observed that the customary cart way from the Bandh of Survey Nos. 93 and 95 was not available. He observed that the customary way for use of petitioners is in existence from Survey No. 85, 86, 90, 93 and 94. There is nothing to indicate that customary cart way was ever existing from Survey No. 93 and 95. In fact, presence of old trees and electric poles was observed on Bandh of Survey Nos. 93 and 95.

8. It is trite that jurisdiction under Section 5 of the Mamlatdar Courts Act is available for removal of obstruction on existing customary way. The material on record do not support contention of the petitioners about existence of the customary cart way from Bandh of Survey No. 93 and 95. From the contents of application submitted by the petitioners to the Tahsildar, no requisite specifications of existing customary way and recent obstruction by respondent could be noticed. Apparently, the Tahsildar, while entertaining the application under Mamlatdar Courts Act granted new road as if he is exercising jurisdiction under Section 143 of the Maharashtra Land Revenue Code. The Additional Collector, after taking survey of the evidence on record, rightly set aside the order of the Mamlatdar. Although it is sought to be contended on behalf of the petitioners that the original land holder Mr. Dattatray Patil has given affidavit asserting existence of customary way from Bandh of survey No. 93 and 95, such affidavit appears to have been filed belatedly before the Additional Collector. It was not part of the proceeding before the Mamlatdar. On the basis of such affidavit, no inference can be drawn regarding existence of customary way. Resultantly, there is no merit in the writ petition. Both the writ petitions stand dismissed.

[S.G. CHAPALGAONKAR]
JUDGE

grt/-