



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.5888 OF 2017**

1. Kamal S/o Rambhau Landge
(Deceased through L.R.s)
- 1(a). Sudhir Rambhau Landge
Age: 30 yrs. Occu. Agri. & Service
- 1(b). Rajershi Wd/o. Ashok Landge
Age: 33 ys. Occu. Household & Agri.
2. Jayshree Maruti Landge
Age: 48 yrs. Occu. Household and Agri.
3. Maruti Laxman Landge
Age: 55 yrs. Occu. Agri. & Service,
4. Rambhau Laxman Landge
Age: 62 yrs. Occu. Agri.

All above R/o. Pimpalgaon Landga
Taluka Nagar, Dist. Ahmednagar

..Petitioners
(Org. Applicants)

Verus

1. The State of Maharashtra
Through the Collector, Ahmednagar.
2. The Sub-Divisional Officer,
Nagar Division, Ahmednagar.
3. The Tahsildar,
Nagar Taluka, Ahmednagar
4. Pandurang Suryabhan Landge
Age: 40 yrs. Occu. Agri. & Service
5. Chandrabhan Sawalaram Landge
Age: 65 yrs. Occu. Agri.
6. Gulab Kisan Landge
Age: 57 yrs. Occu. Agri. & Service,
7. Dattatraya Chandrabhan Landge
Age: 38 yrs. Occu. Agri.

8. Natha Chandrabhan Landge
Age: 35 yrs. Occu. Agri.
9. Prakash Keshav Landge
Age: 59 yrs. Occu. Agri. & Service
10. Govind Kisanrao Landge
Age: 72 yrs. Occu. Agri.
11. Baburao Kisanrao Landge
Age: 68 yrs. Occu. Agri.
12. Suryabhan Sawalaram Landge
Age: 70 yrs. Occu. Agri.
13. Smt. Bhagubai Tanaji Landge
Age: 75 yrs. Occu. Agri.
14. Babasaheb Shivram Landge
Died through L.Rs:
- 14(a). Lilabai Babasaheb Landge
Wd/o. Babasaheb Landge
Age: 40 yrs. Occu. Household
- 14(b). Akshay Babasaheb Landge
Age: 21 yrs. Occu. Agri. & Education
- 14(c). Shubhangi Babasaheb Landge
Age: 19 yrs. Occu. Education
- 14(d). Vaibhav Babasaheb Landge
Age: 16 yrs. Occu. Education
u/g. of real mother Lilabai
Babasaheb Landge resp. No. 14(a).

All above R/o. Pimpalgaon Landga
Post Mehekari, Taluka Nagar,
Dist. Ahmednagar

..Respondents
(Org. Opponents)

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Mr. Sanjay N. Gaikwad h/f Mr. N. V. Gaware, Advocate for
Petitioners.
Mr. P. D. Patil, AGP for Respondents-State.
Mr. G. K. Naik Thigle, Advocate for Respondent No.6.

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CORAM : S. G. CHAPALGAONKAR, J.
DATED : 22nd JULY 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 11.01.2017 passed by respondent no.2-Sub Divisional Officer, Nagar Division in RTS Revision No.422/2015 as well as order dated 29.07.2015 passed by respondent no.3-Tahsildar, Nagar Taluka in Wahivat Case No.22/2015.

3. Mr. Gaikwad, learned Advocate appearing for the petitioners submits that the petitioners are owners and possessors of agricultural lands bearing Gut Nos.45, 46 and 47 situated at village Pimpalgaon Landga, whereas respondent no.5 owns land in Gut No.47. The respondent no.4 resides in Gut No.52. According to the petitioners, they are using customary way that passes from boundary of Gut No.39 and Gut Nos.34, 37, 38, 52 and 53 for ingress and egress. The respondent nos.4 and 5 filed Rasta Case No.22/2015 alleging that 8 feet road passes from Eastern side of the lands bearing Gut No.44 to 47 i.e. South to North direction headed towards Gut No.52 and then connects to East-West Pargaon-Bhatodi road. The respondent no.3-Mamlatdar without recording statements of the witnesses ascertaining factual aspects or following the principles of natural justice allowed the application vide order dated 29.07.2015 only on the basis of Court Commissioner's report that was placed on record of Civil Court in RCS No.314/1996 and granted Cart Road from center of Gut Nos.44, 45, 46 and 47. The petitioners assailed the aforesaid order

in RTS Revision No.422/2015. However, the said Revision came to be dismissed without entering into merits.

4. Mr. Gaikwad submits that Mamlatdar relied only on so called Court Commissioner's Report. No independent enquiry made or recorded in support of conclusion. The contents of the spot panchanama never show existence of customary way.

5. Per contra, Mr. Naik Thigle, learned Advocate appearing for respondent no.6 submits that spot panchanama records existence of way. Similarly, dispute was going on in Civil Court. The learned Tahsildar has rightly relied upon the contents of the panchanama as well as report of Court Commissioner. He would further point out that existence of road is noted in the report of Court Commissioner from the center of Gut Nos.44, 45, 46 and 47 and said road is convenient for user of the land holders from Gut No.52 to approach Pimpalgaon Landga road. Consequently, seeks to confirm order of the Tahsildar.

6. Having considered submissions advanced on behalf of learned Advocates appearing for respective parties, apparently, Tahsildar/Mamlatdar relied only on two documents, firstly spot panchanama, secondly report of Court Commissioner tendered in Civil Suit. The Court Commissioner's Report filed in the Civil Suit itself cannot be elevated to status of evidence, since it is vulnerable and can be challenged by the parties to the Suit. Further the contents of such report are required to be proved by leading evidence. The report of the Court Commissioner placed in civil proceedings cannot constitute evidence unless proved in accordance with law.

7. So far as contents of spot inspection relied upon by the Tahsildar, it is difficult to draw inference that customary way as claimed was in existence. While exercising jurisdiction under Section 5 of Mamlatdar's Courts Act, it is to be borne in mind that definite finding needs to be arrived as to existence of customary way and obstruction to use by defendant within period of six months prior to institution of the suit. Therefore, it was obligatory on part of Mamlatdar to cause in depth enquiry in that regards. For that purpose, recording statements of adjacent land holders, independent villagers becomes imperative, apart from examination of village record, if any depicting customary use of ways. In the present case, except drawing spot panchanama, which is inconclusive and report of Court Commissioner, which in itself doesn't constitute evidence no other material relied while allowing the application.

8. In that view of the matter, it would be in fitness of things to quash and set-aside impugned orders and to remit the matter back to the Tahsildar/Mamlatdar for causing in depth enquiry as regards to the existence of customary way as claimed by the respondents and record findings on relevant aspects in accordance with law. Hence, the following order:

ORDER

- a. Writ Petition is partly allowed.
- b. The impugned order dated 11.01.2017 passed by respondent no.2-Sub Divisional Officer, Nagar Division as well as order dated 29.07.2015 passed by respondent no.3-Tahsildar, Nagar Taluka are hereby quashed and set aside.

- c. The matter is remitted back to Mamlatdar for afresh enquiry as regards to the existence of customary way as claimed by the respondents after giving opportunity of hearing to all the concerned and pass fresh order within a period of four months from today.
- d. Parties shall appear before the Mamlatdar on 29.07.2024.
- e. Writ Petition is disposed of.
- f. Rule is made absolute in above terms.

(S. G. CHAPALGAONKAR)
JUDGE

Devendra/July-2024