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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4599 OF 2022

CHANDRABHAN S/O. HARI GHULE AND ANOTHER
VS
THE STATE OF MAHARASHTRA AND OTHERS

Mr. Sandip R. Andhale, Advocate for the petitioner

Mr. K. N. Lokhande, AGP for the respondent Nos. 1 to 3

Mr. Prashant R. Nangre, Advocate for the respondent Nos. 4 to
19

CORAM : KISHORE C. SANT, J.

RESERVED ON : 09th OCTOBER, 2024

PRONOUNCED ON : 14th NOVEMBER, 2024

P. C.

1. This petition is by the original respondents before the Tahasildar, Pathardi, Ahmednagar in Rasta Case No. 29/2020 filed under the provisions of section 5(2) of the Mamlatdar Courts Act challenging the judgment and order order dated 19-07-2021 passed by the Sub-Divisional Officer, Pathardi allowing the revision (wrongly typed as appeal) in RTS/Appeal No. 137/2020.

2. Respondent Nos. 1 to 3 are the State and its authorities. Respondent Nos.4 to 19 are the original applicants before the Tahasildar, Pathardi in the said proceeding.

3. The facts giving rise to the petition, in short are as under:-

4. That respondent Nos. 4 to 19 filed an application under Section 5 of the Mamlatdar Courts Act before the Tahasildar, Pathardi. They claimed Easementary right of the road to go to their lands bearing Land survey Nos. 199/3, 199/5 and other lands through the lands of the petitioners from land Survey No.199/3 to Survey No. 199/5 and 200/1. It was the case of the respondents before the Tahasildar that there is easementary right to access the cart way to go to their lands from the land of the present petitioners i.e. Gut Nos.199/3. However on 03-07-2020 the petitioners obstructed the said cart way. It is alleged because of this act of the petitioners the respondents are not in a position to go to their lands using easementary way. It is also a case that the said

road is shown even in the Grampanchayat record. It is the case of the petitioners before the Tahasildar that there is no such right of way in existence. The road shown in the map is wrongly shown. There is alternative way to approach the lands of the respondents and for that purpose bogus map is prepared.

5. On such rival pleadings the learned Tahasildar drawn a panchanama on 02-09-2020 in presence of both the parties and some other villagers. In the panchanama it is recorded that there is path existed from the boundary of land Gut No. 190 and Gut No. 198. Said road is obstructed on the border of land Gut No. 196. In Gut No. 199 some houses of the respondents are seen. The road is seen to have been obstructed by taking crops in the land gut Nos. 196 and 199. Even the other road which is used as foot way is also blocked.

6. After going through the pleadings and the map, the learned Tahasildar partly allowed the application by the judgment and order dated 01-10-2020 directing to allow the respondents to use the road as footway and for two wheelers.

It is further directed to the present petitioners to remove the obstruction on the road and not to object the use of said way by the respondents. The respondents approached the Sub-Divisional Officer to the extent of not giving the road for use of cart, vehicle etc.

7. The learned Sub-Divisional Officer treated the said revision as appeal under Section 247 of the MLRC and decided the appeal directing to allow the respondents to use the said way as a cart way. The petitioners also had preferred the appeal that was treated as second RTS/Appeal/No.336/2021. The said appeal came to be rejected as not maintainable vide judgment and order dated 05-04-2022. The petitioners are thus before this court challenging both the judgments.

8. The learned advocate for the petitioners argued the petition. He submits that the learned Sub-Divisional Officer has erred in giving the road as cart way. There is no discussion as to why the order of Tahasildar is modified. When the Tahasildar has specifically held that road can be

used as foot way or for two wheelers, there has to be some reasons for modifying the order and prays for allowing the petition.

9. Mr. Nangre, learned advocate for the respondent Nos.4 to 19 opposed the petition. The respondents have also filed an affidavit-in-reply. He submits that the road is shown even in the grampanchayat record as cart way. Though the road is shown as cart way and in spite of specific pleading to that effect the Tahsildar only directed to give foot way. The Sub-Divisional Officer has rightly considered this aspect and has passed the order. In the revision it is specific case of the respondents that the road is a cart way. Revision was also filed for giving cart way. The Sub-Divisional Officer has considered the pleadings of the parties and pleadings of the arguments advanced by the respective parties. The conclusion is based on such appreciation. He prays for rejection of the petition.

10. The learned AGP submits that proper order is passed. There is also a reply filed by the government

authorities. It is submitted that the order under challenge is already complied with. Now the obstruction is removed as per the order of the learned Tahasildar. It is prayed that petition be dismissed.

11. Question for consideration is as to whether the learned Sub-Divisional Officer has rightly modified the order passed by the learned Tahasildar. In the panchanama it is specifically recorded that there was a road which was blocked and obstructed by the present petitioners. The learned Tahasildar while passing the order has not given any reason as to why the road is to be used as path way or only for motorcycle. The road is shown even in the village panchayat record and there is nothing on record to dispute the same. When the road in existence was a cart way, there is no reason to restrict the use after holding that there is a way in existence. The learned Sub-Divisional Officer has rightly considered this aspect. The application was also filed specifically for that reason. The parties relied upon the judgment reported in 2007 AIR SC 5285 writ petition No.7145/2016 and writ petition No.6074/2018. In the

judgment in the case of Tarabai Ravsaheb Chaudhari and others Vs the State of Maharashtra this court, held that obstruction was created within five months. Except conducting the panchanama nothing was done by the Tahasildar. In the panchanama, it was noticed that, date of obstruction was mentioned. This court expressed surprise how the date of obstruction is recorded in the panchanama. Panchanama expected to give the position as on the date. On the basis of such panchanama the Mamlatdars had decided the issue. It also noticed that Tahasildar had not undertaken the scrutiny of the entire material while arriving at a conclusion. The Sub-Divisional Officer also without going through the material accepted the order passed by the Mamlatdars Court. In that view this court set aside the order passed by the Sub-Divisional Officer.

12. In the case of Indubai Haribhau Ghule Vs The State of Maharashtra and others in WP/7145/2016. This court considered the scope of application under Section 5 of the said Act. In the present case what needs to be seen as to whether the learned Sub-Divisional Officer has committed

any mistake.

13. Considering the above discussion this court finds that there was material to show that the road was in existence. In the panchanama also specifically uses the word as “गाडी रस्ता” which is necessarily a cart way. Though a ground is taken that the Sub-Divisional Officer has invoked the powers under section 143 of the MLRC, this court finds that said ground is immaterial. The respondents had rightly filed a revision under Section 23(2) of the Mamlatdar Courts Act. No case is made out to show that the Sub-Divisional Officer exceeded his power even otherwise. Merely mentioning the revision an appeal will not render the judgment without jurisdiction as the court has power under Section 23 of the Act. This court does not find any merit calling for interference in the judgment and order passed by the learned Sub-Divisional Officer. In view of the same, the petition deserves to be dismissed. Same is hereby dismissed. No order as costs.

[KISHORE C. SANT, J.]