



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5154 OF 2022

Pandhari Dagadu Jadhav And Another

VERSUS

The State Of Maharashtra Through Its Secretary And
Others

- Mr. A. B. Chormal, Advocate for the Petitioners
- Ms. R. R. Tandale, AGP for the Respondent Nos. 1 to 3/State
- Mr. Sandeep Gorde Patil, Advocate for Respondent No. 4
- Mr. K. N. Shermale, Advocate for Respondent No. 5 & 6

CORAM : KISHORE C. SANT, J

DATE : SEPTEMBER 09, 2024

PER COURT :

1. Heard the parties at length.

2. This Petition arises out of the Vahivat case under Section 5(2) of the Mamlatdar Courts' Act. Present Petitioner is the original Respondent in Rasta Case No. 172/2020 before the Tehsildar, Shrirampur. It is the case of the Respondent No. 4, the main contesting Respondent who had filed the application that he happens to be owner of land gut no. 92. Whereas the Petitioners, who were the Respondent Nos. 3 and 4 (Respondent No. 4 died during pendency of the

proceeding and now heirs are brought on record), were the owner of land gut no. 95 and 94. It is the case of the Respondent No. 4 that there is a road passing through gut no. 95 and 94 that goes to land gut no. 92. The said road is blocked by the present Petitioner by putting stones and by making pits with the help of JCB.

3. Learned Tahsildar drawn panchnama by visiting the spot. The said panchnama is even signed by the Petitioners. In the said panchnama, it is clearly stated that there is kaccha road of 8 ft width which goes to the house of Respondent No. 4. The Tahsildar thus on the basis of material and panchnama held in favour of Respondent No. 4 and allowed the application. It is directed to the Petitioners not to obstruct the road going to the land gut no. 92 from east west road on the sought of land gut no. 94.

4. Order dated 08.03.2021 passed by the Tahsildar came to be challenged before the learned SDO, Shrirampur by filing Rasta Revision Application No. 155/2021 on various grounds. Learned SDO by impugned judgment and order dated 06.12.2021 confirmed the order

passed by the Tahsildar and dismissed the Revision. It is the case of the Petitioner before this Court that while drawing panchnama the Tahsildar had not properly recorded the actual position of the land. Though it is signed by the Petitioners, they were not aware about the legal position and implications of the panchnama. He submits that in the village map there is no road shown in existence. It is further submitted that there is also alternative way to go to the land of Respondent No. 4. He thus prays for allowing this Petition by setting aside the orders passed by the learned SDO and Tahsildar.

5. Learned Advocate for Respondent No. 4 vehemently opposed the Petition. He relied upon the map annexed to the Petition showing position of the lands of the Petitioners and Respondents. He submits that Petitioners were present when the panchnama was drawn and they have even signed the same. Petitioners are now raising the grounds which were not raised before the Revisional Authority. He thus prays for rejection of the Petition.

6. Learned Advocate for Respondent Nos. 5 and 6 adopted the arguments of Respondent No. 4.

7. Learned AGP also supports the impugned order submitting that the learned Tahsildar recorded findings on the basis of material available before him and panchnama is drawn by personally visiting the site. She also prays for rejection of the Petition.

8. He relied upon a judgment in the case of Mennath Sitaram Jaygude and Others vs. State of Maharashtra and Ors, WP/521/2020. He further relied upon the judgment reported in 2019 (2) Bom.C.R. 145 in the case of Sudhir Yashwant Dhangade vs. Ankush Kashiram Bole and Others.

In both these cases, the Court held that no sufficient opportunity was granted to the Petitioners therein and in view of that Petitions were allowed. In both the cases matter was remanded back to the Mamlatdar for giving opportunity of leading evidence and cross-examining the witnesses of each other.

9. In the present case, this Court specifically

asked the Petitioners as to whether any such application was made by the Petitioner before Tahsildar, however, he could not give the answer. Nothing is found on record to show that the Petitioner sought permission to examine witness and Tahsildar had not allowed to do so.

10. Learned Advocate for Respondent positively submits that no such application is filed by the Petitioners. Looking to the above both these judgments cited by the Petitioners, are not applicable to the present case.

11. The findings as to existence of road is necessarily of a findings of fact recorded by the Tehsildar and the same is confirmed by the learned SDO. Considering these aspects, this Court finds that no case is made out to call for interference in the impugned judgment and order.

12. In view of above, Petition stands dismissed. No order as to costs.

(KISHORE C. SANT, J.)