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

WRIT PETITION NO. 6016 OF 2022

**ANIL NARHARI BOBADE AND ANOTHER
VERSUS
BABAN SAHEBRAO BOBADE AND OTHERS.**

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Advocate for petitioners : Mr. M.S. Karad, h/f. Mr. V.A. Mundhe, Advocate
Advocate for respondent No.1 : Mr. R.G. Hange
AGP for respondent Nos. 2 and 3 : Mr. V.S. Badakh

CORAM : S.G. CHAPALGAONKAR, J.

DATE :- 20th AUGUST, 2024.

ORDER :-

1. The petitioners impugn the judgment and order dated 24.5.2022 passed by Sub Divisional Officer (Revenue) Paithan, District Aurangabad in Revision Application No. 2022/MAG/ROR/Ma.Act/Pai/CR-34/2021 and judgment and order dated 10.8.2021 passed by the Tahsildar, Paithan, Dist. Aurangabad in Rasta Case No. 2020/jamabandi-2/Takrar/Rasta/CR-95/2020.

2. Mr. M.S. Karad learned advocate appearing for the petitioners submits that the respondent No.1 instituted proceeding under Section 5 of the Mamlatdar Courts Act, claiming customary way to approach their lands in Gat No. 99,101, 100 and 133/3 of village Vahegaon, through the land owned by the petitioners i.e. Gat No. 129. It is alleged that the petitioners have obstructed the said road as well as nallah. Mr. Karad would submit that such application was not in conformity with the provisions of the Mamlatdar Courts Act. There is no

verification to the application. Even the Tahsildar has not followed the further procedure in tune with the Mamlatdar Courts Act. He would submit that on 10.9.2020, the spot inspection was carried and report was submitted to the tahsildar. Again, spot inspection was carried on 10.5.2021. He submits that in both the panchanamas, the Circle Officer has proposed to grant way in exercise of powers under Section 143 of the Maharashtra Land Revenue Code since the respondents have no other access road. Mr. Karad would invite attention of this court to the affidavit filed by vendor of respondent No.1 namely, Vishnu Natha Bobade, who clearly states that customary way from Gat No. 129 was never in existence and there is alternate road to respondent No.1 to approach his land from Vahegaon Vadala Pandi Road. Mr. Karad would submit that the order passed by Mamlatdar so also Sub Divisional Officer, are contrary to the record and not in conformity with the jurisdiction vested with the mamlatdar under Section 5 of the Act of 1906.

3. Per contra, Mr. Hange, learned Advocate for respondent No.1 submits that the natural stream was in existence from Gat No. 129. The Toch map as well as village map of land Gat No. 129 clearly shows existence of the natural stream/Nallah. The Tahsildar as well as S.D.O., having due regard to the old revenue/survey record accepted contention of the respondent No.1 as to the existence of customary way and accordingly passed orders. He would point out that the petitioner has already instituted R.C.S. No. 276 of 2023 before the Civil Judge Junior Division, Paithan claiming the relief of perpetual injunction against the respondents. Said suit is pending adjudication before the competent court of civil jurisdiction. The order passed by the Civil Court would override the orders passed under the provisions of the Mamlatdar Courts Act. In that view of the matter, he urges to dismiss the petition.

4. I have considered the submissions advanced by learned advocates appearing for respective parties and perused the record tendered into service. Apparently, the application dated 24.1.2020 was moved before the Tahsildar with the signatures of as many as 12 persons claiming that they are owners of land Gat No. 99, 100, 101 and 133/3 situated at village Vahegaon and they were using the customary way to approach their land from Gat No. 129 to 101. Said road passes from the natural stream. The old survey record and village map clearly depicts existence of natural stream and same was being used by land holders from nearby Gat numbers. It is also contended that the Department of Agricultural has constructed water storage in Gat No. 128. Similarly, in Gat No. 130, water storage has been created by Pepsico India Holding Private Limited. However, respondent No.1 and one Yogesh Narhari Bobade have disturbed the natural stream and excavated the land from Gat No. 129. This has resulted into shortage of water and reduction in the ground water level. Further, the land holders from adjacent gat numbers have lost customary way. It is alleged that on 16.1.2020, cause of action to file the proceeding.

5. In pursuance of the said application, the spot inspection was carried on 10.9.2020 which depicts that the statements of various persons were recorded. Similarly, panchanama dated 10.5.2021 was carried, wherein, again there is reference to statements of various persons. Although from the aforesaid panchanama, nothing can be discerned to accept the case of the respondent regarding existence of customary way, record indicates that there are certain impeccable documents in the form of Toch map of Gat No. 99, 130, 132, 128, 129 which clearly depicts that from Gat No.129, natural stream passes and

lead to the village road. Same position can be ascertained from the village map. If such is the position in old survey record as well as village map, the finding recorded by authorities relying upon such material cannot be disturbed in writ jurisdiction of this Court.

6. Pertinently, the petitioner has already approach the civil court and filed R.C.S. No. 276 of 2021 before the Civil Judge Junior Division, Paithan, claiming relief of perpetual injunction that the respondent No.1 shall not create cart road or foot way from Gat No.129 belonging to the petitioners. Said suit appears to have been filed immediately after the decision of the revision application by S.D.O., thereby confirming the order of Mamlatdar. It is trite that the finding recorded by the Civil Court would supersede the order passed by the Mamlatdar and decision of the civil court would bind the authorities. Therefore, petitioners can establish their right in the suit without any prejudice on account of the impugned orders. In that view of the matter, there is no reason for this court to invoke jurisdiction under Article 227 of the Constitution of India to disturb the concurrent judgments passed by the authorities under the Mamlatdar Courts Act. In the result, writ petition stands dismissed.

[S.G. CHAPALGAONKAR]
JUDGE

grt/-