



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

WRIT PETITION NO.8601 OF 2022

Ram Nivrutti Birajdar

Age: 60 years, Occ.: Agriculture

R/o. Baspur, Tal. Nilanga, Dist. Latur

..Petitioner

Versus

1. Dhondiba Dadarao Birajdar,
Age: 58 years, Occ.: Agriculture,
R/o. Baspur, Tal. Nilanga, Dist. Latur.

2. The Tahsildar,
Nilanga, Tal. Nilanga, Dist. Latur.

3. The Sub Divisional Officer,
Nilanga, Tal. Nilanga, Dist. Latur.

..Respondents

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Smt. M. S. Mhase, Advocate for Petitioner.

Mr. N. D. Raje, AGP for Respondent Nos.2 and 3.

Mr. V. R. Jain, Advocate for Respondent No.1.

**WITH
CIVIL APPLICATION NO.5478 OF 2024
IN
WRIT PETITION NO.8601 OF 2022**

Dhondiba Dadarao Birajdar,

Age: 63 years, Occ.: Agriculture,

R/o. Baspur, Tal. Nilanga, Dist. Latur.

..Applicant

Versus

1. Ram Nivrutti Birajdar
Age: 65 years, Occ.: Agriculture
R/o. Baspur, Tal. Nilanga, Dist. Latur

2. The Tahsildar,
Nilanga, Tal. Nilanga, Dist. Latur.

3. The Sub Divisional Officer,
Nilanga, Tal. Nilanga, Dist. Latur.

..Respondents

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Mr. V. R. Jain, Advocate for Applicant.

Mr. N. D. Raje, AGP for Respondent Nos.2 and 3.

Smt. M. S. Mhase, Advocate for Respondent No.1.

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CORAM : S. G. CHAPALGAONKAR, J.
DATED : 24th JUNE 2024.

JUDGMENT:-

1. Rule. Rule made returnable forthwith. With the consent of the parties, matter is taken up for final hearing at the stage of admission.

2. The petitioner approaches this Court under Article 227 of the Constitution of India impugning order dated 28.02.2022, passed by the Sub Divisional Officer, Nilanga-respondent no.3, confirming order dated 23.12.2013 passed by the Tahsildar-respondent no.2 under Section 5 of the Mamlatdar Courts Act, thereby granting customary way to respondent no.1.

3. Smt. Mhase, learned Advocate appearing for the petitioner submits that respondent no.1 filed a formal application before Mamlatdar seeking restoration of customary way, alleging that the same is intercepted by the petitioner and two others. It is submitted that the application does not contain requisite details. Even, the learned Tahsildar has not followed the procedure prescribed under Mamlatdar Courts Act and allowed the application granting customary way recording alleged consent of the parties. She would point out that in fact there is nothing on record to show that the petitioner had ever consented for grant of way. The stipulation appearing in the impugned order passed by the Tahsildar is mere surmise. She would further submit that the learned Sub Divisional Officer ignored the aforesaid aspect and dismissed the Revision Application filed by the petitioner. She would, therefore, urge to quash and set aside the impugned orders.

4. Per contra, Mr. Jain, learned Advocate appearing for respondent no.1 submits that the Tahsildar concluded proceeding on 23.12.2013 as per consensus between the parties. The customary 8.5 feet approach road was granted to respondent no.1 from the inner part of the Bandh of Survey No.25. He would submit that in fact the dispute between the parties was resolved. The parties had acted upon the same. However, after more than 8 years of the said order, the petitioner filed Revision Application under Section 23(2) of the Mamlatdar Courts Act before the Sub Divisional Officer, Nilanga raising objection to the order passed by the Mamlatdar. He would invite attention of this Court to the map prepared by the authorities that has been signed by the respective parties and witnesses. He would, therefore, urge to maintain the order passed by the authorities.

5. Having considered submissions advanced on behalf of the learned Advocates appearing for the respective parties, it is apparent that the application tendered by respondent no.1 was not in consonance with requirement of Mamlatdar Courts Act. It sans requisite details about existence or obstruction as to customary way. No particulars of cause of action to initiate proceeding are mentioned. Although, Section 5 confers jurisdiction upon the Mamlatdar to pass the necessary orders regarding removal of the obstruction, the exercise of power is subject to procedure prescribed under Sections 7 to 15 of the Mamlatdar Courts Act. Section 7 stipulates the requirement of the plaint. Clauses (d), (e) and (f) require plaint to mention specific date of cause of action and subsequent circumstances. It is true that Section 8 of the Mamlatdar Courts Act permits filing of the formal application, but further duty rest upon Mamlatdar to assist plaintiff to meet with mandatory requirements. Section 9 requires that the Mamlatdar

shall record plaintiffs statement on oath to secure the compliance of requirement under Section 7 and secure necessary information, which shall be reduced in writing and appended to the plaint.

6. The record tendered before this Court nowhere depicts aforesaid compliance. The order of the Tahsildar appears to have been passed merely in reference to the panchanama dated 21.12.2013, which stipulates existence of customary way from common Bandh between Survey Nos.25 and 26. However, same appears to have vanished on portions of common Bandh of Survey 25 and 28. The respondent holds agriculture land in Gut No.29, whereas the petitioner holds land in Survey No.25.

7. The learned Tahsildar observed in his order dated 23.12.2013 that petitioner agreed to provide access to respondent no.1 from internal part of common Bandh of Survey No.25. The record placed before this Court nowhere depicts that any such consent was recorded in writing or in form of statement on oath. The reply tendered by the petitioner refutes the contentions of respondent no.1. As such, the impugned order sans any basis. Therefore, this is a fit case to remit back matter to Mamlatdar for disposal in accordance with law.

8. Pertinently impugned order passed by the Mamlatdar was subsisting till 23.08.2022 passing of interim order in this petition. The petitioner has unsuccessfully assailed said order in the year 2021 in Revision Application before the Sub Divisional Officer. Looking to the map available on record, it can be observed that the path way was available from Baspur Road on the band of Survey Nos.23 and 25 to reach Survey No.26 and further on the Bandh of Survey No.29 to approach the road. The part of such path way

appears to have been vanished on the Bandh between Survey Nos.25 and 27, which is subject matter of conflict. It is trite that, path way from common Bandh of survey numbers can be used by all land holders and there cannot be obstruction for such use. However, it cannot be treated or used as cart road or for transportation of the vehicles.

9. Taking into account the legal position and factual aspects as discussed, it is necessary to remit back the matter to Mamlatdar with certain directions. Resultantly, following order is passed:

ORDER

- a. Writ Petition is partly allowed.
- b. The impugned order dated 28.02.2022 passed by the Sub Divisional Officer, Nilanga-respondent no.3 as well as order dated 23.12.2013 passed by Tahsildar-respondent no.2 are hereby quashed and set aside.
- c. The learned Mamlatdar is directed to decide application dated 01.11.2013 filed by respondent no.1 in accordance with provisions contained under Sections 7 to 15 of the Mamlatdar Courts Act within a period of three (03) months from the date of appearance of the parties.
- d. The parties shall appear before the Mamlatdar on 28.06.2024 and submit the documents in support of their contentions, if any, in addition to the documents already on record. The Mamlatdar may resort to the fresh inspection of the spot himself or through any authorized person.
- e. Pending hearing and final disposal of the application before Mamlatdar, respondent no.1 shall be at liberty to use the path way

on common Bandh between Survey Nos.25 to 27 for accessing to Baspur Gavthan.

f. In view of disposal of the Writ Petition, present Civil Application stands disposed of.

g. Rule is made absolute in above terms.

(S. G. CHAPALGAONKAR)
JUDGE

Devendra/June-2024