



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

WRIT PETITION NO.9260 OF 2023

Sudam Trimbak Patil
age 65 yrs, Occ. Agri, R/o Achalgaon, Tq Bhadgaon, Dist.
Jalgaon.

VERSUS

The Sub Divisional Officer, Pachora Division And Others

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Advocate for the Petitioner : Mr. B.R. Warma

AGP for Respondents 1,2 : Mr. A.V. Lavte

Advocate for Respondents 3,4 : Mr. V. P. Patil

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CORAM : S. G. CHAPALGAONKAR, J.

Dated : 13th August, 2024

ORDER :-

1. The petitioner impugns the order dated 13.6.2023 passed by the learned Sub Divisional Officer, Pachora in RTS Revision No.125 of 2022 as well as the order dated 31.10.2022 passed by Tahsildar, Bhadgaon in Wahivat Case No.8 of 2022.

2. Mr. Warmaa, learned advocate appearing for petitioner submits that respondent nos.3 and 4 filed Wahivat Application No.8 of 2022 under section 5 of the Mamlatdar Courts Act before the Tahsildar Bhadgaon contending that they are the owners of gat no.63/1 and 63/2. They had approach road to reach their fields from common bandh of gat no.68/1 and 62/2, however, petitioner caused obstruction to them in use of customary way, hence sought removal of the same. The learned Mamlatdar caused spot inspection dated 2.6.2022 and drawn the spot map. Petitioner has specifically denied

existence of customary way as claimed by the respondent nos.3 and 4. However, in absence of evidence to substantiate contention of the respondent nos.3 and 4, learned Tahsildar allowed the application and directed petitioner to remove obstruction and make a way to respondent nos.3 and 4. The Sub Divisional Officer also concurred with the finding of the Tahsildar and rejected revision filed by Petitioner.

3. Mr. Warmaa, would submit that existence of customary way will have to be proved by bringing concrete material indicating long standing use of way without obstruction. Mamlatdar is required to conduct proceeding under section 5 of the Mamlatdars Courts Act as a Civil Suit. He is expected to cause in-depth inquiry and spot inspection before he reaches to the conclusion. However, in the present case, casually order is passed ignoring affidavits of adjacent land holders and other evidence tendered by the petitioner. Mr. Warmaa, would further point out that respondent nos.3 and 4 have purchased the land under sale-deed of 2004 from Mr. Bapurao Hansraj Patil. He filed affidavit before the Mamlatdar ascertaining that customary way as claimed by Respondent nos.3 and 4 was never in existence. He would therefore urge that when vendor of respondent nos.3 and 4 has filed affidavit countering case put up by respondent nos.3 and 4, Mamlatdar could not have drawn contrary inference.

4. Per contra, Mr. V.P. Patil, learned advocate appearing for respondent nos.3 and 4 submits that sale-deed of respondent nos.3 and 4 clearly stipulates that customary

Wahivat shall continue in favour of the purchasers. He would further draw attention of this Court to affidavit of Mr. Nana Dattu Patil, who is owner of land gat no.62/2, which is adjacent to gat no.68/1 owned by petitioner and shares common boundary, from which respondent nos.3 and 4 claimed customary way. He clearly states about existence of customary way as claimed by respondent nos.3 and 4. Mr. Patil, would further invite attention of this Court to the spot panchnama drawn by the Tahsildar, which records that except portion of common bandh of gat no.68/1 and 62/2, Pandi road is available to reach land of respondent nos.3 and 4 and obstruction is created by blasting and putting stones. He would point out that panchnama also records that there is no alternate way to respondent nos.3 and 4 to reach lands for cultivation.

5. Both learned advocates appearing for the parties have placed on record certain photographs to show present position of the spot.

6. I have considered the submissions advanced by learned advocates appearing for the respective parties and also perused documentary evidence tendered into service. It is not in dispute that in pursuance of the application tendered by respondent nos.3 and 4, learned Tahsildar caused spot inspection and drawn the map of the spot. Perusal of the spot panchnama dated 2.6.2022 clearly shows that obstruction has been created abutting to gat no.68/1 on eastern corner of gat no.62/2. Thereafter, there is existence of customary way to

reach land of petitioner. It is true that some Neem Trees are also seen on common bandh of gat no.68/1, however, that itself is not sufficient to discard case of respondent nos.3 and 4. Spot map clearly depicts that Pandi Road starting from gat no.28/3/A passes from eastern side of the gat no.68/1 and at the corner of gat no.62/2, obstruction is created by putting stones. After common bandh of gat no.68/1 and 62/2 road reaches to Nala on southern portion. It is, therefore, clear that the customary way was in existence as claimed by respondent nos.3 and 4. Pertinently, case of respondent nos.3 and 4 is supported by affidavits of adjacent land holder from gat no.62/2, who shares common boundary with petitioner. The finding recorded by Mamlatdar shows that he has rightly appreciated contents of the affidavit of Gorakh Nana Patil and also spot inspection report. Further, there are affidavits of witnesses on panchnama to support case of Respondent Nos.3 and 4. The learned S.D.O also concurred with the finding of fact recorded by the Mamlatdar. It is true that vendor of respondent no.3 and 4 has given affidavit countering contents of the application, however, there is voluminous evidence to support the contentions of respondent nos.3 and 4.

7. Although, Mr. Warmaa contends that petitioner was not given opportunity to cross-examine the witnesses, who tendered affidavits in favour of respondent nos.3 and 4, he could not point out that any application seeking permission to cross examination or calling witnesses for cross examination was tendered before the Mamlatdar. The provisions of Civil Procedure Code or evidence Act may not strictly apply to the

proceeding under Mamlatdar Courts Act, which provides its own procedure for speedy disposal of applications under section 5 of the Act. No procedural defect is brought to the notice of this Court. As rightly pointed out by Mr. Patil, this Court would not sit in appeal over the decision of the authority below or delve into thickets of facts and substitute view taken by the authorities below upon the appraisal of the facts. A findings of fact is not amenable to correction in exercise of writ jurisdiction unless such findings are shown to be perverse or based on no evidence.

8. In the present case, no such case is made out. Consequently, there is no merit in the writ petition. Writ Petition stands dismissed. No costs.

(S. G. CHAPALGAONKAR)
JUDGE

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