



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

WRIT PETITION NO. 10251 OF 2023

Sambhaji Vitthal Gawali And Others

VERSUS

The District Collector Ahmednagar And Others

...

Mr. R. R. Karpe, Advocate for the Petitioner

Mrs. P. R. Bharaswadkar, AGP for Respondents/State

Mr. A. N. Kakade, Advocate for Respondent Nos.4 & 5

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CORAM : R.M. JOSHI, J

DATE : JULY 01, 2024

PER COURT :

1. This Petition takes exception to order dated 19.12.2022 passed by Civil Judge, Senior Division, Shrigonda in RCS No. 210/2022 rejecting application Exh. 5 filed by the Plaintiffs/Petitioners, which order was confirmed by the learned District Judge in Misc. Civil Appeal No. 04/2023.

2. Learned Counsel for the Petitioners submit that Respondent Nos. 4 and 5 filed application under Section 143 of the Maharashtra Land Revenue Code, 1966 (for short 'Code') for seeking right to way over the boundaries. A reasonable access was sought. According to him, perusal of the application shows that these Respondents had asked for the way from the properties

of Petitioners and other persons for approaching Gut Nos. 39 and 40 belonging to them. An application was filed under Section 143 of the Code indicates that averment is made to the effect that since these Gut Nos. 39 and 40 being ancestral properties and neighbours thereof using the bandhs of various land to approach to their properties, a prayer is sought for the road to the length of 1200 ft with 12 ft width it was claimed. This application came to be allowed and in view of provisions of Section 143(4) of the Code a suit came to be instituted before the CJSD, Shrigonda challenging the said order. It is his contention that application filed vide Exh. 5 for stay of the said order but this application is rejected by ignoring the fact that Gut No. 39 was not even inspected by the Tahsildar before approving the road to Gut No. 39 too and such order is mechanically confirmed by District Judge. It is his further submission that the road sought to be provided for the Respondent Nos. 4 and 5 covers substantial part of property of Petitioners and other persons and without acquiring said property, Tahsildar could not have directed road to be provided thereon. It is also argued that though no prayer is

made, Tahsildar has allowed laying of road for transportation of tractor/trolley etc therefrom.

3. Learned Counsel for Respondent Nos. 4 and 5 supported the impugned orders. It is his contention that it was within the right of the Tahsildar to pass order under Section 143 of the Code as there is no road available for these Respondents to access their agricultural lands as well as houses. It is his submission that merely because the Tahsildar has committed error in not inspecting the Gut No. 39, these Respondents cannot be made to suffer for the same.

4. There cannot be any dispute with regard to the powers of the Tahsildar under Section 143 of the Code. For the sake of convenience, Section 143 is reproduced thus:

***Section 143 - Right of way over boundaries***

*(1) The Tahsildar may inquire into and decide claims by persons holding land in a survey number to a right of way over the boundaries of other survey numbers.*

*(2) In deciding such claims, the Tahsildar shall have regard to the needs of cultivators for reasonable access to their field.*

*(3) The Tahsildar's decision under this Section shall, subject to the provisions of sub-sections (4) and (5), be subject to appeal and revision in accordance with the provisions of this Code.*

*(4) Any person who is aggrieved by a decision of the Tahsildar under this Section may, within a period of one year from the date of such decision, institute a civil suit to have it set aside or modified.*

*(5) Where a civil suit has been instituted under sub-section (4) against the Tahsildar's decision, such decision shall not be subject to appeal or revision.*

5. Sub-section 1 of Section 143 though states that Tahsildar 'may' inquire into and decide claims for right to way but in order to decide such claim inquiry is mandated. Having regard to the nature of claim, such issue cannot be decided without inspection of the properties concerned. It is only on such inquiry as necessary for the decision of the claim in respect of granting a right of way over the boundaries of the other survey numbers, an order can be passed. It is thus clear that when an application was made for the right of way over the boundaries of the land pertaining to the Petitioners and others for Gut Nos. 39 and 40,

it was incumbent on the part of the Tahsildar to inspect all concerned properties including both guts. Admittedly, Gut No. 39 was never inspected as it appears from the inspection report. In spite of such factual position, an order came to be passed directing a way for Respondent Nos. 4 and 5 even for Gut No. 39. In spite of these facts being brought to the notice of learned Trial Court, they were brushed aside by observing that the inspection panchnama cannot be 'encyclopedia'. Though panchnama/inspection report need not be encyclopedia but it cannot be allowed to sustain if it lacs inspection of relevant property. In order to permit any way upto Gut No. 39, there must be inspection of area leading to said gut. Thus, this Court finds it impossible to accept said reason recorded by Trial Court since it was necessary for the Tahsildar to inspect the land up to which the road was to be approved and failure thereto would not justify order.

6. Apart from this, this Court finds substance in the contention of the learned Counsel for the Petitioners that it is not the case wherein the way is

approved by the Tahsildar for reasonable access having regard to the needs of cultivation. Tahsildar has granted way for transportation of tactor/trolly without prayer being made to that effect. Moreover, when substantial portion of the land of these persons is being taken away without following due procedure of law and as contended on behalf of Petitioner without paying compensation for acquisition of land, in such case strict compliance of Section 143 of the Code is expected. This Court does not wish to decide the issue of acquisition of land as sought to be canvassed by Petitioner in this Petition. But this Court finds substance in the said contention if substantive portion of land is going to be lost of any person.

7. Aforestated facts as they appear from the record clearly shows that the order passed by the Tahsildar is not in compliance of Section 143 of the Code. Hence, *prima facie* case is made out by the Petitioners in order to seek stay to the said order. Learned Trial Court as well as First Appellate Court fell in error in not noticing the non compliance and turning blind eye to the irregularities committed by

the Tahsildar.

8. Learned Counsel for the Respondent Nos. 4 and 5 submits that Respondents right to prefer fresh application for right to way may not be taken away by the observations made in this order. Needless to say that it is always open for the Tahsildar to pass appropriate order in compliance of provisions of law.

9. In view of above, Petition stands allowed. Impugned orders passed by Trial Court and District Court stands set aside. Exh. 5 is allowed. Order dated 08.04.2022 stands stayed till decision of R.C.S. No. 210/2022.

10. Petition stands allowed in above terms.

(R. M. JOSHI, J.)

Malani