



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

WRIT PETITION NO.10122 OF 2023

1. Shivaji Laxman Mhaske
Age 70 years, Occu: Agri.

2. Laxmibai Shivaji Mhaske,
Age 65 years, Occu: Agri.

Both R/o Loni Vyanknath,
Tq. Shrigonda, Dist. Ahmednagar.

..Petitioners
(Ori. Defendants.)

Versus

1. Sambhaji Laxman Mhaske
Age 65 years, Occu: Agri.

2. Shivaji Santosh Londhe,
Age 62 years, Occu: Agri.
R/o Mungusgaon, Tq. Shrigonda,
District Ahmednagar.

3. Varsha Bapu Mhaske
Age 50 years Occu: Household.

4. Akshay Bapu Mhaske,
Age 26 years, Occu: Agri.

5. Aditya Bapu Mhaske
Age 23 years, Occu: Agri.

6. Asha Shahaji Mhaske,
Age 40 years, Occu: Agri.

7. Shantabai Gangarm Datir,
Age 75 years, Occu: Agri.

8. Dnyaneshwar Bhalchandra Pandav,
Age 36 years, Occu: Agri.

9. Rajabhau Shankar Mhaske,
Age 49 years, Occu: Agri.

R. Nos. 1, 3 to 9 R/o Loni-Vyanknath,
Tq. Shrigonda, District Ahmednagar.

10. The Tahsildar,
Shrigonda, Tq. Shrigonda,
District Ahmednagar.

11. The Sub Divisional Officer,
Shrigonda, Parner Division,
Ahmednagar, District Ahmednagar.

..Respondents
(R. No.1 Orig. Plaintiff)
(R. No.2 to 9 Orig. Defts.
(Formal Parties)

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Mrs. Anjali Bajpai-Dube, Advocate for Petitioners.

Mr. P. D. Patil, AGP for Respondents-State.

Mr. S. V. Suryawanshi h/f Mr. S. V. Deshmukh, Advocate for
Respondent No.1.

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CORAM : S. G. CHAPALGAONKAR, J.
DATED : 22nd JULY 2024.

JUDGMENT:-

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

2. The petitioners impugn the order dated 27.03.2023 passed by the Sub Divisional Officer, Shrigonda in Revision Application No.432/2022 as well as order dated 21.09.2022 passed by the Tahsildar/Mamlatdar, Shrigonda in Suit bearing No.SR/Wahiwat/65/2021.

3. The petitioners contend that the respondents own the agricultural land in Gut No.340. The petitioners are owners of Gut Nos.342 and 343. The respondents filed proceeding under Section 5(2) of the Mamlatdar's Courts Act before the Tahsildar claiming customary way through lands owned by the petitioners. The Tahsildar without material indicating existence of customary way, allowed the Suit and restrained the petitioners from obstructing use of so called customary way. The petitioners approached the

Sub Divisional Officer in Revision under Section 23(2) of the Mamlatdar's Courts Act. However, Revision Application is dismissed without application of mind.

4. The respondents, however, contend that the customary way was in existence since long and it was used by owners of land from Gut No.343 to approach Chimble-Loni-Vyanknath road. However, the petitioners have illegally obstructed such way without any reason. The Mamlatdar after carrying necessary spot inspection, recorded correct findings of fact and passed the order in exercise of jurisdiction under Section 5(2) of the Mamlatdar's Courts Act.

5. Mrs. Anjali Bajpai-Dube, learned Advocate appearing for the petitioners would submit that procedure prescribed under Sections 7 to 15 of the Mamlatdar's Courts Act has been overlooked by both the authorities. According to her, spot map dated 23.12.2021 is prepared behind back of the petitioners. They were not served with notice and only based on such panchanama, conclusion has been drawn. She would point out that the petitioners have created road from their own land to approach Chimble-Loni-Vyanknath road. No such customary way was available at any point of time. The respondents are having alternate road. Therefore, there was no reason to invoke provisions under the Mamlatdar's Courts Act.

6. Mr. Suryawanshi, learned Advocate appearing for respondent no.1 submits that during spot inspection, existence of way from common Bandh of land Gut No.340, 342 and 343 has been noted. The Authorities have rightly exercised jurisdiction and issued direction restraining the petitioners from obstructing customary way.

7. Having considered submissions advanced, it can be observed that the respondents have specifically pleaded that they owns land from Gut No.340 admeasuring 70R. The Chimble-Loni-Vyanknath Tar road passes from Northern side of Gut Nos.340 and 343. The customary way having width of 12 feet is in existence since last 10 years to approach Tar Road. The petitioners and respondents were using the same. However, on 04.07.2021, the petitioners have obstructed the use of such road by the respondents.

8. Per contra the petitioners refuted the contentions of the respondents and denied existence of customary way as claimed. According to them, they have purchased lands from Gut Nos.342 and 343 under registered sale deed dated 25.11.1994, which mentions four boundaries of the land and existence of customary way is not discernible from the contents of the sale deed. They also plead that customary way is available for respondents from the Western Band of Gut No.339 to approach the Tar road.

9. The Tahsildar drawn a panchanama dated 23.12.2021, which records that customary way passes from common Band of Gut No.340 and Gut Nos.342-343 and such a way is open and no obstruction was recorded. However, from the contents of the panchanama it is not discernible if it is customary way available for the use of land holders or it has been constructed by the petitioners. Learned Tahsildar made no attempts to record statement of adjacent land holders or no independent inquiry is made to find out existence of customary way. The panchanama records existence of way from common Bandh of Gut Nos.342, 343-343. Whether it passes further or it is only created for user by

owners of Gut No.342 and 343 is mute question that is not answered.

10. It was necessary for Mamlatdar to cause deeper inquiry and answer question as to the existence of customary way. If the respondents were claiming right of customary way, then long standing use of such way, not only by the petitioners, but others from adjacent Gut numbers could have been noticed. The statements of independent witness could have been recorded. As rightly pointed out by Mrs. Bajpai-Dube, spot panchanama appears to have been prepared behind back of the petitioners. Further contents thereof are denied by them.

11. In this background, impugned orders appears to have been passed on the basis of inconclusive material and it would be in the fitness of things to remit the matter back to the Mamlatdar to cause fresh inquiry as regards to the existence of customary way and pass appropriate orders accordingly. Hence, the following order:

ORDER

- a. Writ Petition is partly allowed.
- b. The impugned orders dated 27.03.2023 passed by the Sub Divisional Officer, Shrigonda as well as order dated 21.09.2022 passed by the Tahsildar/Mamlatdar, Shrigonda are hereby quashed and set aside.
- c. The matter is remitted back to the Mamlatdar, who shall cause fresh enquiry as regards to the existence of customary way claimed by the respondents and after giving opportunity of hearing to all the concerned, pass fresh order within a period of four months from the date of this order.

- d. Parties shall appear before the Mamlatdar on 29.07.2024.
- e. It is made clear that there shall not be obstruction to use common Bandh as pathway.
- f. Writ Petition is disposed of.
- g. Rule is made absolute in above terms.

(S. G. CHAPALGAONKAR)
JUDGE

Devendra/July-2024