



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

961 WRIT PETITION NO.11951 OF 2017

NATHA MURALIDHAR GAYKE AND ANOTHER

VERSUS

VISHNU MACHHINDRA GAYKE AND OTHERS

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Mr. Shaikh Ashraf Patel, Advocate h/f Mr. A.P. Avhad, Advocate for petitioners

Mr. P.V. Ambade, Advocate for respondent Nos.1 to 9

Mr. A.S. Shinde, AGP for respondent Nos.11 and 12

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CORAM : S.G. CHAPALGAONKAR, J.

DATE : 04th JULY, 2024

ORDER :

1 Petitioners impugn order dated 13.02.2017 in Revision Application No.545 of 2025 passed by Sub Divisional Officer, Ahmednagar as well as the order of Tahsildar passed in Case No.SR 64/2014, by which directions are given to grant road in favour of original applicants from the common bund of Gat Nos.274 and 275 up to Gat No.277.

2 Respondent Nos.1 to 9 had approached the Mamlatdar under Section 5(2) of the Mamlatdar's Courts Act for grant of customary cart way

from common bund of Gat No.274 and 275 up to Gat No.277. It is contention of respondent Nos.1 to 9 that it was a customary road used by adjacent land holders, however, petitioner Nos.1 and 2 – original respondents obstructed them from using such road. Consequently, they invoked the jurisdiction of Mamlatdar under Section 5(2) of the Mamlatdar's Courts Act. In pursuance of application, spot inspection dated 16.07.2014 was caused, which depicts that old cart road exists on the common bund of Gat No.277 and 274, however, it has been obstructed on common bund of Gat No.274 and 275. Taking into account aforesaid position, learned Tahsildar allowed application of respondent Nos.1 to 9 and directed removal of obstruction. Order of Mamlatdar was subjected to Revision under Section 23(2) of the Act vide RTS Revision No.545/2015 before Sub Divisional Officer. The Sub Divisional Officer confirmed the order passed by Mamlatdar vide Judgment and order dated 13.02.2007.

3 During pendency of this petition as per direction of this Court under order dated 07.09.2022, report regarding width of common bund of Gat Nos.274 and 275 was called. Such report is submitted by Tahsildar under communication dated 21.06.2022 with map showing width of bund. Perusal of map shows that width of common bund between Gat Nos.274 and 275 is in the range of 2.37 meters to 1.90 meters. Apparently, width of

common bund appears sufficient for the cart road. It is trite that there cannot be obstruction from land holders to use common bund as path way. Width of common bund as per map produced before this Court is sufficient to hold that it was used as a cart road. Spot inspection report of Tahsildar and subsequent report filed in pursuance of order dated 07.09.2022 passed by this Court is sufficient to hold that common bund was used as a cart road. Pertinently, petitioners in their reply filed before learned Mamlatdar admits that they have no objection to use common bund as customary way up to Gat No.277. Therefore, there is no difficulty in implementing order passed by Mamlatdar. In that view of the matter, no jurisdictional error is discernible in impugned orders. Writ petition sans merit, hence dismissed.

(S.G. CHAPALGAONKAR)
JUDGE

agd