



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

WRIT PETITION NO. 11210 OF 2022

1. Vasant Ramarao Madan And
2. Devidas s/o Ramarao Madan.

VERSUS

The Sub Divisional Officer Revenue Jalna And Others

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Advocate for Petitioner : Mr. S.N. Lute

AGP for Respondents no.1,2 : Mr. P D Patil

Advocate for Resp.no.3 : Mr. V.A. Bagal h/f Mr. K.T. Taur

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CORAM : S. G. CHAPALGAONKAR, J.

Dated : 2nd August, 2024

PER COURT :-

1. The petitioners impugn the order dated 29.4.2022 passed by the Sub Divisional Officer (Revenue), Jalna in File No.2021/ROR/CR-55 as well as the order dated 5.3.2021 passed by the Respondent No.2-Tahsildar/Mamlatdar, Badnapur in file No.2021/Jamabandi-1/CR-384 under section 5 of the Mamlatdars Court's act.

2. Mr. Lute, learned advocate appearing for petitioners submits that petitioners holds agriculture land in gat no.66 situated at Rala, Tq. Badnapur, District Jalna. Respondent no.3 claims that petitioners have closed the existing customary way from Bandh of gat no.66 which was being used by the owners of land from gat no.68, 69 and 79. Mr. Lute, would submit that neither village map

nor sale deeds or any other document supports existence of such way. However, Mamlatdar entertained omnibus application filed by respondent no.3 and others and granted the relief in terms of section 5 of the Mamlatdars' Courts Act thereby restraining petitioners from interfering use of the Pathway by respondent no.3 from gat no.66. He would submit that Revision Application filed before the Sub Divisional Officer came to be rejected without application of mind. Hence, this writ petition.

3. Mr. Bagal h/f Mr. Taur, learned advocate appearing for respondent no.3 justifies the impugned order. He points out that no other way is available to land holders like petitioners except from common bandh of gat no.66 for cultivation of their land. He would submit that spot panchnama drawn by the Revenue officers would show existence of such customary way. The alternate way which was available for those land holders has been vanished due to natural calamities.

4. Having considered the submissions advanced, it can be gathered that respondent no.3 alongwith others approached the Mamlatdar contending that petitioners have blocked customary way from common bandh of gat no.66 that was used by them for entering into their land from gat no.68, 69 and 79. Circle Officer submitted spot inspection report to the Tahsildar dated 11.12.2020 alongwith the spot panchnama, which records that as per

village map or otherwise, existence of customary way from gat no.66 is not discernible. However, owners of gat no.68, 69 and 79 do not have alternate way except from the bandh of gat no.66 and they should be given access from the way as claimed by them. Panchnama also records that alternate road has been submerged in dam water and since 6 to 7 years petitioners have closed the foot-path passing from the bandh of gat no.66. However, from contents of the panchnama, no specific conclusion can be arrived as regards to existence of customary way. The cryptic order dated 5.3.2021 passed by Mamlatdar shows that new road or footway has been granted by the Tahsildar looking to the difficulty faced by respondent no.3. The said order is confirmed in revision by the Sub Divisional Officer.

5. The aforesaid sequence of events would show that there is nothing on record to draw conclusion as regards to existence of customary way, and particularly, the obstruction created by petitioners within the period of six months prior to institution of the proceedings. On the other hand, material on record indicates that since last 6 to 7 years use of the way from bandh of gat no.66 is stopped. However, fact remains that respondent no.3 and other land holders from gat no.68, 69 and 79 have no alternate way. It is trite that the common bandh can be used as a Path-way. Although, such access would be

limited with condition that there shall not be loss to the crop of the adjacent land holders. However, in the present case, learned advocate appearing for the petitioners submits that his land falls within gat no.66 and respondent no.3 is granted access from midst of his land, apart from the footway from bandh of gat no.66. Such a direction is not expected in exercise of the powers under section 5 of the Maharashtra Land Revenue Code. In this background, it would be just and proper to set aside the impugned order with liberty in favour of respondent no.3 to file fresh application under section 143 of the Maharashtra Land Revenue Code for grant of way if he has no alternate access for cultivation of the land. Further, respondent no.3 shall be entitled to use the portion of Bandh of gat no.66 only as a Pathway without entering into the land of petitioners.

6. In view of the aforesaid observations, following order is passed.

ORDER

- i. Writ Petition is partly allowed.
- ii. The impugned order dated 5.3.2021 passed by Respondent No.2-Tahsildar/Mamlatdar, Badnapur in file No.2021/Jamabandi-1/CR-384 as well as the order dated 29.4.2022 passed by the Sub-Divisional Officer, (Revenue),

Jalna in File No.2021/ROR/CR-55 are hereby quashed and set aside.

- iii. The Respondent No.3 shall be at liberty to file application under section 143 of the Maharashtra Land Revenue Code in case he do not have alternate road for cultivation of the land.
- iv. The Respondent No.3 shall also be at liberty to use the Bandh of gat no.66 as Footway without entering into land of the petitioners till his application under section 143 for grant of way is decided by the Authorities.
- v. Writ Petitions stands disposed off. No costs.

(S. G. CHAPALGAONKAR)
JUDGE

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aaa/-