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947 WP-3076-2015

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

947 WRIT PETITION NO. 3076 OF 2015

Shaikh Sagir Shaikh Lal And Others
VERSUS
The State Of Maharashtra And Others

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Mr. Vivek M. Lomte, Advocate for the Petitioners.
Mr. N. D. Raje, AGP for Respondent-State.
Mr. S. K. Chavan for Respondent No.4.

CORAM : KISHORE C. SANT, J.
DATE : 19th NOVEMBER, 2024

PC :-

1. Heard the parties.
2. This writ petition is filed against an order dated 7th August 2014 passed by the learned Additional Collector, Hingoli allowing the revision filed by the respondent No.4. The learned Additional Collector, by way of impugned order dated 26th June 2012, allowed the revision application and set aside the order passed by the Tahsildar allowing the application of the petitioners and other villagers under section 5 of the Mamlatdar's Court Act, 1906. The Tahsildar by his order had directed the Respondent No.4 to remove the obstruction and to allow the petitioners and other villagers to

use the said land as a way from Gut No.35 of village Umara Tq. Aundha Nagnath. The Tahsildar had passed an order based on the personal visit and the panchnama. It was held by the Tahsildar that the right of way of the villagers is obstructed by the respondents.

3. The learned Additional Collector in revision application observed that no road is shown in the village map. The Tahsildar has not considered this aspect by giving his reasoning. The learned Additional Collector also considered in the panchnama that it is not specifically recorded that there is a way to go for land at Gut No. 34 and set aside the order.

4. The learned Advocate for the petitioner submits that the Respondent No.4 had filed a Regular Civil Suit No139 of 2012 seeking injunction and restraining the defendants/present petitioners from causing obstruction in peaceful enjoyment and possession over the suit property. One of the issue framed was, "does plaintiff prove that he is owner and possessor of suit property". This issue is answered in negative. The another issue was, "does the defendants prove that they are using the suit property as a way since their forefather". This issue is answered in

affirmative. It is submitted that after the Civil Court has recorded the finding that the petitioners have clearly established their rights. The judgment in the RCS was challenged by way of appeal bearing Regular Civil Appeal No. 9 of 2016. The said appeal also came to be dismissed.

5. The learned Advocate for the petitioners submits that the findings recorded by the Civil Court will prevail upon the finding recorded by the learned Additional Collector, Hingoli. He prays for allowing the present petition.

6. Learned Advocate for the Respondent No.4 opposed the petition stating that the suit is dismissed on technical ground that the plaintiff had not given proper boundaries of the suit land. The finding thus would not show that the right of way is recognized in respect of the present way. He prays for dismissal of the petition.

7. Learned AGP supports the orders.

8. Considering the fact that now there is concurrent findings of fact against respondent No.4, this Court hardly finds any reason to justify the order passed by the learned Additional Collector. Once the Civil Court has recorded a finding, the finding recorded by the

Tahsildar and Additional Collector needs to be set aside.

9. In view of the same, this Court finds that the case is made to allow the petition. Petition is, therefore, allowed. Impugned judgment and order passed by the learned Additional Collector dated 7th August 2014 in Mamlatdar's Court Act in Revision No. 2012-1 is hereby set aside.

10. Needless to say that Second Appeal, if any, is pending or preferred by the Respondent No.4, then this order shall be subject to out come of said Second Appeal.

11. Writ Petition stands disposed off.

[KISHORE C. SANT, J.]