



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.15320 OF 2023**

Dilip S/o Bajirao Aher.
Age-34 yrs., Occ. - Agri.
R/o Nillod, Tq. Sillod,
Dist. Aurangabad.

..Petitioner

Versus

1. The State of Maharashtra
2. The District Collector Aurangabad,
Dist. Aurangabad.
3. The Sub-Divisional Officer Sillod,
Dist. Aurangabad.
4. The Tahsildar Sillod, Tq. Sillod,
Dist. Aurangabad.
5. The Talathi, Talathi Sajja Nillod,
Tq. Sillod, Dist. Aurangabad.
6. Ajinath S/o Ramdas Jadhav.
Age-36 yrs., Occ. - Agri. R/o Nillod,
Tq. Sillod, Dist. Aurangabad.
7. Anil S/o Muralidhar Gorade.
Age-37 yrs., Occ. - Agri.
R/o Nillod, Tq. Sillod,
Dist. Aurangabad.

..Respondents

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Mr. V. M. Humbe, Advocate for Petitioner.
Mr. A. S. Shinde, AGP for Respondent Nos.1 to 5.
Mr. P. D. Jarare, Advocate for Respondent Nos.6 and 7.

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

JUDGMENT:-

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

2. The petitioner impugns the order dated 11.09.2023 passed by the Sub Divisional Officer, Sillod, District Aurangabad thereby rejecting Revision Outward No. २०२३/मामलेदार/पुनरिक्षण/सिआर-१३/२०२३/कावी-१६२ and confirming the order dated 20.10.2021 passed by the Tahsildar, Sillod under Section 5 of the Mamlatdar Courts Act, 1906 (for short 'Act of 1906').

3. Mr. Humbe, learned Advocate appearing for the petitioner submits that the respondents approached Tahsildar/Mamlatdar seeking customary way from land bearing Gut No.656 owned by the petitioner. No specific application was made for that purpose. The learned Tahsildar without following due process of law acceded to the prayers of respondent nos.6 and 7 and granted way in their favour. The petitioner assailed said order before Sub Divisional Officer in Revision under Section 23(2) of the Act of 1906, however, suffered dismissal. Mr. Humbe submits that previously application with similar prayer was made by the father of respondent no.7 and others, but no orders were passed thereon. Mr. Humbe would invite attention of this Court to the statements of Mr. Haridas Jadhav and Mr. Ajinath Jadhav, owners of Gut No.611, who denied the existence of customary way as claimed by respondent nos.6 and 7. Mamlatdar acted beyond parameters of his jurisdiction and passed impugned order without following prescribed procedure under Sections 7 to 15 of the Act of 1906.

4. Per contra, Mr. Jarare, learned Advocate appearing for respondent nos.6 and 7, vehemently submits that there is voluminous evidence indicating existence of customary way that passes from common Bandh of Gut Nos.617 and 650, which reaches to the Nillod-Palshi cart road. The petitioner has blocked the road

on common Bandh between Gut No.655 and 611. He would further submit that respondent nos.6 and 7 had tendered the application before the Mamlatdar narrating requisite details in terms of provisions contained in Section 7 of the Act of 1906. The Tahsildar recorded panchanama and noted existence of cart road, which has been blocked by the petitioner. Mr. Jarare would further point out that petitioner had challenged order dated 20.10.2021 passed by the Mamlatdar by filing Regular Civil Suit No.73/2022 along with application seeking temporary injunction as regards to suit way. The Civil Court rejected petitioners application vide order dated 02.12.2022. Even Miscellaneous Appeal filed before the District Judge has been dismissed. Thereafter, Revision Application had been filed before the Sub Divisional Officer under Section 23(2) of the Act of 1906, which is rejected. Consequently, he submits that there is no substance in the petition and urges to reject the same.

5. Having considered submissions advanced, it is apparent that respondent nos.6 and 7 filed an application dated 04.06.2019 before the Tahsildar invoking provisions of Section 5 of the Act of 1906, contending that they are owners of Gut No.621 and 628 respectively. The cart road passes from Gut Nos.611, 612, 656, 655 and 652, that has been used by the farmers. However, owners of Gut Nos.656 and 611 have disturbed the road when construction was undertaken under government scheme. Consequently, cause of action arose on 31.05.2019. Accordingly, the prayer was made to clear customary way passing from the Bandh of Gut Nos.655, 656 and 611. In pursuance of such application, the Tahsildar caused spot inspection and found obstruction. Consequently, passed the order dated 20.10.2021 directing clearance of road from Gut Nos.611, 612, 652, 655 and 656.

6. Pertinently petitioner approached Civil Court by filing Regular Civil Suit No.23/2022, assailing order of Tahsildar alongwith application seeking injunction against respondent nos.7 and 8 and other farmers. The Civil Court after hearing the parties, rejected petitioners prayer for injunction against respondents in respect of Gut No.656 situated at village Nillod. The petitioner had thereafter approached the District Judge in Miscellaneous Appeal No.07/2023 challenging the order passed below Exhibit-5 in R.C.S. No.23/2022. Pertinently, during the pendency of the Appeal, Court Commissioner was appointed by the order of the learned District Judge. The report of the Court Commissioner depicts existence of 12 feet road on the boundary of Gut No.611 and Gut Nos.650, 651 and 652, which goes to Nillod-Palshi cart road. Accordingly, learned District Judge rejected the appeal confirming the order of the Civil Court. As rightly pointed out by Mr. Jarare, after suffering rejection of application for temporary injunction in trial Court as well as the Appellate Court, the petitioner approached the Sub Divisional Officer by filing Revision under Section 23(2) of the Act of 1906.

7. It is not disputed before this Court that the Civil Suit filed by respondent nos.6 and 7 is still pending trial. The dispute can be finally resolved on final adjudication by Civil Court and order passed by the Mamlatdar would be subject to the final decision in Suit. In the present case, the Authorities exercising jurisdiction under the Act of 1906 have concurrently recorded finding that petitioner has obstructed existing way, consequently, directed removal of obstruction made by the petitioner. Similarly, the Civil Court on, *prima facie*, consideration of the material, rejected the contentions of the petitioner that no such way was in existence. In

this background, there is no reason to interfere in the concurrent findings recorded by the respondents-Authorities.

8. So far as contentions raised by Mr. Humbe regarding non-observance of the procedural aspects under the Act of 1906, it is difficult to accede with such contentions. As indicated above proceeding before the Mamlatdar appears to have been commenced on the basis of application dated 04.06.2019 filed by respondent nos.6 and 7. The cause of action dated 31.05.2019 is specifically pleaded. The contents thereof are duly verified. The contention that backdated application is registered is raised first time in this petition and found to be fallacious. Apparently, there is no scope to find out material defect in plaint in terms of Section 7 of the Act of 1906. Therefore, reliance placed by Mr. Humbe on the judgment of this Court would not assist him in the facts of the case. Resultantly, there is no merit in Writ Petition and the same is dismissed.

9. It is made clear that the decision rendered under the Act of 1906 shall be subject to the final outcome of the pending Civil Suit between the parties qua the subject matter and any observation made in this order shall not prejudice petitioner in prosecuting remedy before Civil Court.

10. Rule is discharged.

(S. G. CHAPALGAONKAR)
JUDGE