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

WRIT PETITION NO. 14220 OF 2017

YUVRAJ BHILA BEHERE

....Petitioner

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

.....Respondent

.....

Advocate for the Petitioner : Mr. Patil Vijay B.

AGP for Respondents: Mr. P.D. Patil.

Advocate for respondent Nos. 3A to 3D : Mr. Tapan Sant.

CORAM : S.G. CHAPALGAONKAR, J.

DATE : 19TH AUGUST, 2024.

ORDER :-

The petitioner impugns the order dated 13.10.2017 passed by the S.D.O. Erandol, in RTS case NO. 38 of 2017 as well and judgment and order dated 5.6.2017 passed by respondent No.2 Tahsildar in Vahivat Case No. 119 of 2016.

2. Mr. Vijay Patil, learned advocate for the petitioner vehemently submits that the petitioner was using the customary way from Gat No. 82 to approach his land situated at Gat No. 73. He invites attention of this court to the copy of the plaint and specific contention in para.14 to contend that the petitioner used to approach his field from Gat No. 20, 21 and thereafter Gat NO. 82. He would invite attention of this court to the Panchanama 9.9.2016. to contend that there was a customary way from common bandh of Gat No. 84 to 84/1. He would further submit that although the petitioner had supported his case by filing affidavits, both the authorities have not referred to the said

evidence and relied upon the affidavits filed on behalf of respondents. Petitioner was also not given an opportunity to cross examine the persons, who had tendered affidavit in support of case of the respondent. He would, therefore, submit that the writ petition be allowed and matter be relegated to the Tahsildar for fresh inquiry.

3. Per contra, Mr. Sant, learned advocate for respondents submits that there is no evidence declaring existence of customary way as claimed by the petitioner. Both the authorities below have concurrently found that the petitioner could not prove his case as pleaded in the plaint and consequently, dismissed the application. He would submit that there are concurrent finding of fact and no interference under Article 227 of the constitution is warranted.

4. Having considered submissions advanced, it can be observed that petitioner approached the authorities under the Mamlatdar Courts Act claiming customary way from Gat No.82 owned by respondent. In such case, it was incumbent upon the petitioner to establish his case on the basis of his own evidence. The authorities were under obligation to find out whether any customary way was in existence and whether that has been obstructed by respondent within six months prior to institution of the proceeding. In the present case, in pursuance of the proceeding instituted by petitioner Panchanama dated 9.6.2016 is caused. Perusal of the said panchanama shows that no concrete findings are recorded as regards to the existence of customary way as claimed by the petitioner. Particulars of the alleged obstruction could not be noted. The petitioner appears to have relied upon some affidavit in support of his case. However, said person did not support the case of the petitioner. The

Tahsildar as well as the SDO, elaborately considered the material on record and found that the original owner of Gat No.82 has retracted from his affidavit that was supporting the case of the petitioner. Similarly, there is no other evidence in support of existence of customary way as claimed.

The SDO has again appreciated aforesaid facts in detail. In his order, the SDO has observed that the petitioner never demanded to call witnesses relied by the respondents for cross examination. The grievance made by the petitioner was found to be after-thought.

5. In that view of the matter, the concurrent finding recorded by the authorities under the Mamlatdar Courts Act do not require interference in writ jurisdiction of this court under Article 227 of the Constitution of India. Petitioner would be at liberty to establish his right, if any, by filing appropriate proceeding in the nature of civil suit and or application under Section 143 of the Maharashtra Land Revenue Code. In that view of the matter writ petition stands dismissed.

6. It is made clear that observations made hereinabove are only for the purpose of disposal of the writ petition and would not be an impediment, in case any proceeding is instituted by the petitioner, as permissible under law.

[S.G. CHAPALGAONKAR]
JUDGE

grt/-