



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.13351 OF 2022**

1. Prabhakar S/o Bankatrao Mokase (Jahagirdar)
Age: 74 years, occu: Agri,
R/o Kalkoti Tq. Chakur
Dist. Latur.
2. Pandurang S/o Tatyarao Malishe
Age: 60 years, Occu: Agri,
R/o Kalkoti q. Chakur, Dist: Latur. ..Petitioners

Versus

1. The State of Maharashtra
Through
the Additional Divisional Commissioner No.1,
Aurangabad.
2. The Additional Collector,
Latur District. Latur.
3. The Sub-Divisional Officer,
Ahmedpur District. Latur.
4. The Tahsildar,
Tahsil Office, Chakur
District. Latur.
5. Digambar S/o Tukaram Nandgave
Age: Major Occu: Agri,
R/o Rachannawadi Tq. Chakur
Dist. Latur.

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Mr. G. D. Kale, Advocate for Petitioners.
Mr. S. B. Jadhav, AGP for Respondent No.1.
Mr. V. D. Gunale, Advocate for Respondent Nos.2 to 5.

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**CORAM : S. G. CHAPALGAONKAR, J.
DATED : 04th 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 petitioners approach this Court under Article 227 of the Constitution of India, impugning judgment and order dated 26.06.2015, passed by the learned Tahsildar, Chakur, in Case No.2011/Jamabandi/ROR/51 as well as orders passed by the Sub Divisional Officer, Nilanga, Additional Collector, Latur and Additional Divisional Commissioner, Aurangabad, confirming the order passed by the learned Tahsildar.

3. Mr. Kale, learned Advocate appearing for the petitioners submits that respondent no.5 had initiated proceeding invoking Section 5 of the Mamlatdar Courts Act, 1906 (for short 'the Act of 1906') seeking removal of the impediment for use of customary way and sought consequential relief to pass restrain order against the petitioners, contending that customary way exists between Gut Nos.99 and 100 situated at village Kalkoti. The respondent no.5 is owner of Gut No.96 and the petitioners are the owners of adjacent Gut Nos.99 and 100. The customary way was being used since long. However, same has been obstructed on 15.07.2011. Consequently, proceeding had been initiated seeking intervention of the Mamlatdar. Mr. Kale would further point out that although proceeding was initiated invoking provisions of the Act of 1906, the learned Tahsildar granted new road from common Bandh of Gut Nos.99 and 100, in exercise of powers conferred under Section 143 of the Maharashtra Land Revenue Code, 1966 (for short 'MLRC, 1966'). He would submit that order passed by the Tahsildar/Mamlatdar was unsuccessfully assailed before the Sub Divisional Officer, Nilanga, Additional Collector, Latur and Additional Divisional Commissioner, Aurangabad. Hence, this Writ Petition.

4. Mr. Gunale, learned Advocate appearing for respondent nos.2 to 5 submits that the only customary way that was available for

respondent no.5, goes from the common Bandh between Gut Nos.99 and 100. The spot panchanama was carried on 16.11.2011, which suggests existence of such road having width of 6 to 7 feet. He would, therefore, submit that the learned Tahsildar is justified in granting relief in favour of respondent no.5.

5. Having considered submissions advanced by the learned Advocate appearing for the respective parties and on perusal of the documents tendered on record before this Court, it is apparent that respondent no.5 invoked jurisdiction of Tahsildar under Section 5 of the Act of 1906 asserting existence of customary way that was being used for last 32 to 35 years. It is alleged that on 15.07.2011, the petitioners obstructed use of such road. The petitioners denied the existence of any cart road and asserts availability of alternate road. Perusal of the spot panchanama depicts that respondent no.5 asserts that since last 2 years prior to the date of panchanama, he was restrained from using the customary way passing from Bandh of Gut Nos.99 and 100.

6. Although, entire proceeding was moved under the Act of 1906, the learned Tahsildar appears to have passed an order invoking provisions under Section 143 of the MLRC, 1966 and granted new cart road in favour of respondent no.5. Apparently, the learned Tahsildar has wrongly exercised jurisdiction under Section 143 of the MLRC, 1966, when proceeding before him was instituted under the Act of 1906. The provisions under Section 143 of the MLRC, 1966 operate in independent sphere and takes care of a different situation than as contemplated under Section 5 of the Act of 1906. In the present case, respondent no.5 specifically pleaded existence of customary way and alleged obstructions at the hands of the petitioners. In that view of the matter, there was no reason for Tahsildar to invoke his jurisdiction under Section 143 of

the MLRC, 1966 and grant new cart road in favour of respondent no.5. Unfortunately, the challenge to this order was not entertained in Revision.

7. Resultantly, the gamut of the aforesaid discussion leads to hold show that it is a case of complete wrong exercise of jurisdiction, inconsistent with mode and manner prescribed under the Act of 1906. The impugned orders are, therefore, liable to be quashed and set aside and the matter needs to be remitted back to the Tahsildar to decide afresh by following procedure contemplated under section 7 to 15 under the Act of 1906 and consider the prayers in the application moved by respondent no.5 within the parameters of the jurisdiction conferred under Section 5 of the Act of 1906. Resultantly, Writ Petition succeeds. Hence, the following order:

ORDER

- a. Writ Petition is partly allowed in terms of prayer Clause (C).
- b. The matter is remitted back to the learned Tahsildar, Chakur, who shall decide the application filed by respondent no.5 under Section 5 of the Mamlatdar Court Act, 1906 by following due procedure prescribed under that Act only.
- c. Parties shall appear before the learned Tahsildar, Chakur on 08.07.2024 and co-operate for early disposal of the matter.
- d. The learned Tahsildar shall decide the proceeding within a period of three (03) months from the date of appearance of the parties and forthwith communicate his decision.
- e. Rule is made absolute in above terms.

(S. G. CHAPALGAONKAR)
JUDGE