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wp 312.23 (1).odt

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

WRIT PETITION NO. 312 OF 2023

ARUN PRUTHVIRAJ SHRIKHANDE
VERSUS
THE SUB DIVISIONAL OFFICER AND OTHERS.

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Mr. R.V. Gore, Advocate for the petitioner,
Mr.A.V. Lavte, AGP for respondent Nos. 1 to 4.
Mr. V.B. Anjanwatikar, Advocate for respondent Nos. 5 to 8.

CORAM : S.G. CHAPALGAONKAR, J.

**RESERVED ON : 24th JUNE, 2024.
PRONOUNCED ON : 15th JULY, 2024.**

ORDER :-

1. The petitioner impugns the judgment and order dated 8.12.2022 passed by the S.D.O., Parbhani in Revision Petition No. 64 of 2022 as well as judgment and order dated 4.11.2022 passed by the Tahsildar, Parbnani in Case No. 2022/Jamabandi-1/Rasta/Kavi.

2. Mr. R.V. Gore, learned Advocate appearing for the petitioner submits that respondent Nos. 5 to 8 hold agricultural land Gat No. 208. They have a customary way from Gat No. 208, and obstruction by the petitioner. They claim that customary way was existing since last 50 years. The entire land in Gat No. 208 was owned by Gunaji Gaikwad. Petitioner purchased land from Gunaji Gaikwad. Before purchase of the land by the petitioner there was no obstruction to use cart way, which

leads to Shinganapur Road. With the aforesaid contentions respondent Nos. 5 to 8 approached the Tahsildar under Section 5 of the Mamlatdar Courts Act and raised claim for customary right to way and removal of obstruction at the hands of the petitioner. Consequently, Tahsildar caused spot inspection dated 3.6.2021 and granted cart way as claimed.

3. The petitioner challenged the said order by filing Revision Application. However, vide order dated 30.8.2021, revision application was dismissed. The petitioner had challenged the said order before this Court by filing Writ Petition No. 12066 of 2021. This court, after hearing the parties, set aside the orders and remanded the matter to Tahsildar for fresh decision. Respondents No. 5 to 8 were permitted to file fresh application in conformity with the provisions of Mamlatdar Courts Act. Accordingly, they filed amended application. The petitioner filed written statement pointing out discrepancies in the pleadings. However, learned Tahsildar refused to take written statement on record by mis-interpreting this court's order dated 27.7.2022.

4. Mr. R.V. Gore submits that as per clause (3) of operative part of the order dated 27.7.2022, petitioner was granted liberty to file written statement. Therefore, Tahsildar should have allowed the petitioner to submit written statement and also examine the witnesses. The respondent Nos. 5 to 8 have examined 5 witnesses in support of their case. They were cross-examined by the petitioner. The petitioner has also examined himself and sought permission to call the witnesses, on spot panchanama dated 25.6.2021 for cross-examination. However, his prayer was rejected on the ground that only those witnesses, whose statements are recorded, can be cross-examined. Consequently, without

giving sufficient opportunity to the petitioner, learned Tahsildar allowed the application and directed petitioner to remove obstruction over cart way merely on the basis of spot inspections dated 25.6.2021 and 3.6.2021. The petitioner raised challenge to the order of Tahsildar by filing Revision Application before the S.D.O. However said application came to be dismissed vide order dated 8.12.2022. According to Mr. Gore, the impugned orders are passed on evidence and as such, liable to be quashed and set aside.

5. Per contra, Mr. B.B. Anjanwatikar, learned Advocate for respondent nos. 5 to 8 supports impugned order. He would submit that petitioner has cross examined all the witnesses and also recorded his evidence. The learned Tahsildar adopted course of procedure strictly in compliance with the directions of this Court under order dated 27.7.2022.

6. Having considered the submissions advanced, apparently this is the second round of litigation. In earlier round, this Court disposed of W.P. No. 12066 of 2021 vide order dated 27.7.2022. Clause Nos. (iii) and (iv) of the operative part reads thus :-

(iii) The matter is remanded back to Tahsildar, Parbhani, who shall follow the mandate of Sections 10 and 11 of the said Act and give opportunity of hearing to the petitioner.

(iv) Tahsildar, Parbhani shall decide the matter afresh on the basis of record, from the stage of giving opportunity of cross-examination of persons whose statements are recorded

earlier, to the petitioner.”

7. Clause (iv) clearly stipulates that Tahsildar shall **decide the matter afresh on the basis of record from the stage of giving opportunity of cross-examination of persons whose statements are recorded earlier to the petitioner.** Petitioner is not disputing that he has cross-examined all the witnesses who were examined earlier. Mr. Gore simply contends that the petitioner was not given opportunity to examine the witnesses on panchanama. As rightly observed by learned Tahsildar, no witness on panchanama was examined. Still, the petitioner was asking to call them for cross-examination. From the order passed by this Court, it is not discernible that petitioner was granted leave to cross examine those witnesses. In fact, matter was remanded back since this Court had noticed that petitioner was not granted to opportunity to cross-examine the witnesses whose statements were recorded before Mamlatdar. It appears that earlier, statements of adjacent land owners were recorded and no cross-examination was permitted. Therefore, the contention of the petitioner that he could have given opportunity to cross-examine the witnesses on panchanama appears to be fallacious.

8. So far as the evidence on record is concerned, both the authorities, based on the evidence of adjacent land owners and spot panchanama, recorded concurrent finding of fact that the customary cart road was in existence for immemorial period. The witnesses examined on behalf of respondent Nos. 5 to 8 have stated about the existence of such road since 20 to 30 years. Therefore, the finding of fact recorded by the authorities relying upon the admissible material cannot be disturbed in exercise of writ jurisdiction. No jurisdictional error requiring

interference under Article 227 of the Constitution of India is pointed out.
Writ petition sans merit, hence dismissed.

[S.G. CHAPALGAONKAR]
JUDGE

grt/-