



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7844 OF 2023

Akshay Soma Abhivant

... Petitioner.

Versus

The State of Maharashtra

Through its Revenue Minister

... Respondents.

Mr.R.M. Haridas i/by Mr.Prasad Kulkarni a/w. Mr. Somnath Thengal for the Petitioner.

Ms. Dhruti Kapadia, AGP for the Respondent-State.

Mr. Nitin Gaware-Patil, a/w. Mr.Sachin Thorat for the Respondent No.4.

Coram : Sharmila U. Deshmukh, J.

Date : July 31, 2024

P. C. :

1. By this petition, the challenge is to the order dated 26th February, 2021 passed by the State Government through the Hon'ble Minister for Revenue in Second Revision No.3720/1339/P.K.229/J-5, rejecting the Revision Application filed by the Petitioner.

2. The facts of the case are that the Petitioner is the owner of the property bearing Gat No.715/1, whereas the Respondent Nos.2 to 4 are the owners of the Gat Nos.715/2, 715/3 and 715/4 situated on the southern side of Gat No.715/1 and there is National Highway No.9 on the northern side of petitioner's land. The Respondent Nos.2 to 4 filed an application under Section 143 of the Maharashtra Land Revenue Code, 1966 ("MLRC") contending that Gat No.715 was partitioned and

for purpose of accessing their land there was cartway existing from western side to southern side. The Petitioner is the nephew of the Respondent Nos.2 to 4 and in the partition, the land allotted to the share of the Petitioner is adjoining the Highway No.9. After the death of their brother, the Petitioner, who is their nephew has obstructed the road.

3. The Tahsildar after considering the averments observed that the Application made by the Respondent Nos.2 to 4 seeking access through Gat No.715/1/A is proper and appropriate, that Gat No.715 was the common property of the Petitioner and the Respondent Nos.2 to 4 and subsequently by partition separate gat numbers have been constituted and that the site inspection shows that the owner of Gat No.715/1/A has obstructed the access road for accessing the field i.e.Gat Nos.715/4, 715/3 and 715/2. By order of 26th August, 2008, the Tahsildar allowed the access road from adjacent to the boundary of Gat No.715/1/A till Solapur-Pune National Highway No.9.

4. As against this, an Appeal came to be filed before the Sub Divisional Officer, who remanded the matter vide order dated 3rd March, 2009. After remand, the Tahsildar conducted fresh spot inspection and passed order dated 12th January, 2010 confirming earlier order dated 26th August, 2008. The Appeal to the Sub Divisional Officer was dismissed by order dated 7th February, 2011 as against which Appeal was filed before the Additional Collector, who dismissed

the Appeal. As against this, Appeal came to be filed before the Additional Commissioner which came to be rejected. Revision which was filed under Section 257 of the MLRC before the Hon'ble Minister came to be rejected. The Hon'ble Minister upheld the orders passed by the Tahsildar, Sub-Divisional Officer, the Collector and Divisional Commissioner and dismissed the Revision Application.

5. Heard Mr.Haridas, learned counsel appearing for the Petitioner and Mr.Gaware Patil, learned counsel appearing for the Respondent No.4.

6. Mr. Haridas, Learned counsel appearing for the Petitioner would firstly object to the maintainability of the Application before the Tahsildar under Section 143 of the MLRC. He would point out the Application filed by the Respondent Nos.2 to 4 before the Tahsildar annexed at page 52 of the petition and would contend that the specific Application was that there is an obstruction to the existing road caused by the Petitioner. He submits that in view thereof, the provisions of Section 143 of the MLRC are not applicable and the appropriate course, if any, would have been to adopt the necessary proceedings under Section 5 of the Mamlatdar's Courts Act, 1906. He would further submit that in any event under Section 143 of the MLRC, the access if any could have been from the boundary of the property, however, in the present case, the access has been given through the land adjacent to the boundary. He tenders the google

map and would submit that the google map would show that there is a Papri Nal Bandwadi Road on the southern side of Gat No.715/4 which connects to Pune-Solapur National Highway No.9. He submits that it is therefore evident that application has been made malafide as it is possible for the Respondent Nos.2 to 4 to access their field from the Papri Nala Bandwadi Road. He would further submit that the Hon'ble Minister has held that the Tahsildar has allowed the road after necessary inquiry that there is no other alternate road available for access to fields of the Respondent Nos.2 to 4. He submits that despite observing that on the southern side of Gat No.715/4, there is Angar Papri Rastra, it has been held that the Respondent Nos.2 to 4 are entitled to a road through the land of the Petitioner. He submits that the Hon'ble Minister has upheld the findings of the Authorities below without considering the site position which shows existence of a road on the southern side for access to the fields of the Respondent Nos.2 to 4.

7. *Per contra*, Mr. Gaware Patil, learned counsel appearing for the Respondent No.4 would submit that strict rules of pleadings are not applicable and therefore though the application at page No.52 mentions about the road available has been obstructed in fact, what was sought is a right of way through the field of the Petitioner. He would point out spot inspection panchanama and would submit that it was recorded in the panchanama that on the inspection on the western side of Gat No.715 there is no road visible. He would further

submit that the Tahsildar has held that for the purpose of accessing Gat Nos.715/2 and 715/3, there is no road available and that between Gat No.715 and 713 there is Gat No.714 which belongs to some of other agriculturists. He therefore submits that the Tahsildar has rightly considered that there is no road which is available for accessing the field of the Petitioner. In support he relies on the decision of the learned Single Judge of this Court in ***Subhash s/o. Baburao Chakrupe and Ors. vs. Suresh s/o. Shankarrao Ronge and Ors.*** in ***Writ Petition No.2974 of 2014, decided on 31st January, 2022***, where the learned Single Judge upon appreciation of Section 143 of the MLRC, has held that the Petitioners therein had to cover longer distance to approach their field which is inconvenient and thus the Petitioner is entitled to claim a shorter way for reasonable access to the field.

8. Considered the submissions and perused the records.

9. It is not disputed that Gat No.715 was partitioned between the Petitioner and the Respondent Nos.2 to 4 and the Petitioner has been allotted Gat No.715/1 which is adjacent to Pune-Solapur National Highway No.9 and to the southern side of the petitioner's land is Gat No.715/2, then 715/3 and Gat No.715/4. Gat No.715/4 is adjacent to Papri Nala Bandwadi Rasta which admittedly connects to the Pune – Solapur National Highway No.9. The google map which has been tendered across the bar by the learned counsel for the Petitioner has not been disputed and thus the position of the property which

is stated above is not in dispute. The Application which was preferred by the Respondent Nos.2 to 4 before the Tahsildar was under Section 143 of the MLRC. The specific contention in the application was that the Gat No.715 was partitioned in four portions and the Petitioner's share is adjacent to the Highway No.9 and for the purpose of accessing their field from the western side there was a right of way which was left however, the Petitioner after the death of his father has obstructed the road and as such, a request was made for taking appropriate action. Even if, it is accepted that the strict rules of pleadings may not be applicable while filing of application under Section 143 of the MLRC, however, what matters is the case setup by the Respondent Nos.2 to 4 in their application which would decide the remedy which will have to be adopted by the Respondent Nos.2 to 4. Considering the specific case put up by the Petitioner, the appropriate course was to relegate the Respondent Nos.2 to 4 to the remedy of filing of application under Section 5 of the Mamlatdar's Courts Act, 1906. However, the Tahsildar has entertained the application filed under Section 143 of the MLRC. Notably, in the arguments before the Tahsildar as is discerned from the impugned order of the Tahsildar, it is argued that on the western side adjacent to the Petitioner i.e. Gat No.715/1, there was a cart-way which road has been obstructed by the Petitioner. The arguments before the Tahsildar were

advanced by their advocate and not by the Respondent Nos.2 to 4 in person. Conjoint reading of the application alongwith arguments which were made at the time of hearing, it is quite evident that the case of the Petitioner does not fall under the provisions of Section 143 of the MLRC as what was sought was a removal of the obstruction to the earlier road by the Petitioner and not a new right of way. That apart in affidavit-in-reply filed by the Respondent No.4 in present Petition, it is stated in paragraph 8 that after death of Petitioner's father, the Petitioner stopped common way and prevented Respondent Nos.2 to 4 to go to their lands through common road and application was filed before the Tahsildar with prayer to open the road.

10. The provisions of Section 143 of the MLRC, governs the right of way over boundaries and is propelled by the needs of cultivators for reasonable access to their fields. Where the material on record demonstrates that the case of Respondents is of obstruction on existing right of way, the appropriate remedy is under Section 5 of the Mamlatdar's Courts Act. Therefore, I find considerable force in the submissions of the learned counsel for the Petitioner that the application is itself not maintainable under Section 143 of the MLRC.

11. Apart from the above, even on facts it is very clear that the

application is a malafide application. The factual position of the site as noted from the google map as well as the sketch annexed at page No.51 of the Petition would indicate that there is a road on the southern side of the property of the Respondents and it is not as if there was no road available for accessing their fields. The contention of the Respondent Nos.2 to 4 that a shorter road can be demanded for reasonable access to their field is fallacious for the reasons that Gat No.715/4 which belongs to one of the Respondents is adjacent to Papri Nala Bandwadi Rasta and the field of the other two Respondents is on the northern side of Gat No.715/4. On the contrary, seeking an access from Pune-Solapur National Highway No.9 appears to be a longer route for accessing the field being Gat No.715/4. In that view of the matter there was no warrant for the owner of Gat No.715/4 to join in the application for the purpose of seeking a right of a shorter road as in fact, Papri Nala Bandwadi Rasta which was adjacent to Gat No.715/4 would be a more convenient and shorter road.

12. The Tahsildar while allowing the application has observed that in respect of Gat No.715/4, there is an adjacent Angar Papri Road, however, in respect of Gat No.715/2 and 715/3, there is no other road which is available for accessing the Pune-Solapur National Highway No.9. There is no material which is placed on record to demonstrate as to why access is sought only from Pune-

Solapur Highway No.9 to their field and could not have been sought from the Papri Nala Bandwadi Road which was adjacent to Gat No.715/4. The Tahsildar has granted the right of way through the land of the Petitioner for the reason that for the purpose of accessing the national highway No.9 from Gat No.715/2 and 715/3, the said road is nearer and convenient. What was required to be considered is the availability of road for purpose of access to their fields and not for the purpose of accessing the National Highway No.9. The order of Tahsildar directs the right to way for accessing Gat No.715/2, 715/3 and 715/4 through the Gat No.715/1 till Pune-Solapur National Highway No.9.

13. The provisions of Section 143 of the MLRC are very clear and what can be granted is right of way from boundary of the gat numbers and not through the land of the Petitioner itself. Further while passing the said order, the Tahsildar has permitted even the owner of Gat No.715/4, the right of way through the land of the Petitioner after observing that there is a road on the southern side of Gat No.715/4 for accessing the said gat number. The impugned order is clearly unsustainable. The Sub Divisional Officer and the learned Divisional Commissioner has rejected the challenge to the order of the Tahsildar based on the site inspection report and the panchanama without noticing the actual position which is demonstrated from the panchanama and the sketch. The Hon'ble

Minister has upheld the findings of the authorities based on the site inspection report by the Tahsildar and without considering the submissions of the Petitioner that on the southern side of Gat No.715/4, there is Angar Papri Nala Bandwadi road which is available. As the whole purpose of exercising the powers under Section 143 of the MLRC is to make available a right of way where none is available, it was necessary for the Authorities to apply their minds to the panchanama and the site map which showed a road on the southern side of the lands of Respondent Nos.2 to 4, for the purpose of accessing their field and that there was no reason put forth as to why access is sought only from the Pune-Solapur National Highway No.9 and not from the Angar Papri Road which was on the southern side of the property. Considering that a composite application was made by the Respondent Nos.2 to 4, it is evident that the application was made only with an intent to harass the Petitioner by seeking an access through his land. The impugned order does not appreciate the fact that what can only be granted is the right of way over the boundary and not through the land of the Petitioner which has been done in the present case. The impugned orders are therefore legally unsustainable.

14. As regards the decision in the case of ***Subhash s/o. Baburao Chakrupe and Ors.*** (supra), which has been relied upon by the learned counsel for the Petitioner, in that case though the

contention was that there was an obstruction by the Respondent and an application under Section 143 of the MLRC was entertained, there was no submission which was advanced before the learned Single Judge pointing out Section 5 of the Mamlatdar's Courts Act. In that case the Tahsildar after considering the alternate ways had come to a conclusion that the roads available are of a longer distance and are inconvenient and therefore had upheld the order of the Tahsildar which provided a road of shorter distance for reasonable access to their field. The said decision is distinguishable as in that case, the Tahsildar has come to a specific finding on the alternate road which was available for access of the field of the Applicants therein and had found that the right of way which is created was a shorter distance. In the present case, there is no finding as regards the road to the southern side of the gat numbers of the Respondent Nos.2 to 4 i.e. Angar Papri Road or that the said road is inconvenient being of a longer distance. The order does not reflect any such finding and the reasons in the order cannot be supplemented by way of oral arguments contending that the said road is inconvenient being a longer road. The said finding arrived at by the Tahsildar while adjudicating the application in that case has not been arrived at in the present case, therefore, the decision does not assist the case of the Respondent Nos.2 to 4.

15. Although considering the malafide application of Respondent Nos.2 to 4, I was inclined to impose costs on the Respondent Nos.2 to 4, however, I have refrained from doing so.

16. In light of the above, the Petition succeeds.

17. The order of the Tahsildar dated 26th August, 2008 passed in Rasta Case No.37 of 2007, order dated 7th February, 2011 passed by the Sub Divisional Officer in Appeal No.6 of 2010, order dated 20th September, 2012 passed by the Additional Collector in Appeal No.103 of 2011, the order dated 19th November, 2013 passed by the Commissioner in Revision No.133 of 2013 and the order of the Hon'ble Minister dated 26th February, 2021 is hereby quashed and set aside.

18. Resultantly, the Application preferred by the Respondent Nos.2 to 4 before the Tahsildar being Rasta Case No.30 of 2007 stands dismissed.

[Sharmila U. Deshmukh, J.]