



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

<u>WRIT PETITION NO.4131/2023</u>	
<u>PETITIONERS</u>	1. Namdeo Suryabhan Karde, Aged about 71 years, Occ. Agriculturist. 2. Chagandas Sadashiv Tekade, Aged 62 years, Occ. Agriculturist. Both R/o Mauli Chor, Tq. Nandgaon Khandeshwar, Dist. Amravati.
<u>...VERSUS...</u>	
<u>RESPONDENTS</u>	1. The Sub Divisional Officer, Tiosa-Bhatkuli, Amravati, Tq. & Dist. Amravati. 2. The Tahsildar/Mamlatdar, Nandgaon Khandeshwar, Tq. Nandgaon Khandeshwar, Dist. Amravati. 3. Sau. Shubhangi Anup Autkar Aged 50 years, Occ. Agriculturist, R/o Shrawani Plots, Near Allahaji Dargah, Akola, Tq. & Dist. Akola. (Amended/Added R. No.4 after R.3) 4. Shrikrishna s/o Rajaram Isal Aged about 74 years, R/o Mahuli (Chor), Tahsil- Nandgaon Khandeshwar, District – Amravati. (Amendment carried out as per Court's Order dt.19/7/23)

Mr. S.M Vaishnav, Advocate for petitioners Mr. Abhijit Mate, AGP for respondent nos.1 and 2 Mr. K.B. Zinjarde, Advocate for respondent no.3

CORAM : BHARAT P. DESHPANDE, J.

DATED : 12/03/2024

ORAL JUDGMENT

1. Heard. Rule. Rule made returnable forthwith. Heard learned counsel for the parties with consent for final disposal.
2. The challenge in the present petition is against the order passed by the Sub-Divisional Officer, Tiwasa-Bhatkuli, thereby allowing revision by quashing and setting aside the order of the Tahsildar and granting right of way to the respondents through Survey Nos.85/1, 85/2 and 85/5.
3. Learned counsel for the petitioners would submit that the Tahsildar himself conducted inspection and found that there is no such right of way available to the respondents and in fact a sketch prepared shows that there is another way available to the respondents.
4. Learned counsel for the respondent no.3 would submit that in fact the way which has been pointed out by the Tahsildar is not at all a right of way but is a portion of Nala, wherein the water flows and it is obstructed by shrubs and bushes.

5. Record clearly goes to show that neither parties produced survey plans so as to prove their respective claims. Even the learned Mamlatdar while conducting spot inspection failed to take along with him the survey records or survey plans for the purpose of drawing the sketch and to find out the situation on the spot.

6. The application filed by the respondent no.3 was initially rejected only on the statements of some of the witnesses that there is another way available to the said party, which order has been quashed and set aside by the Appellate Court in the revision.

7. The most important aspect is to consider the survey record and the survey plan, which is clearly absent in the present matter. In order to resolve the dispute of the right of way claimed by respondent no.3, it is necessary for the learned Tahsildar to prepare proper site inspection report by himself or through Talathi by taking the help of the survey plans and thereafter decide it in accordance with law. Since the above aspect is completely missing from the record and the decision has been given only on the basis of oral statements of some of the witnesses, wherein it appears that the way which has been claimed by the petitioners as available to the petitioners is clearly obstructed due to bushes and shrubs as well as

water at some places. There is no finding of the learned Mamlatdar that such way is actually used by the concerned parties for approaching the said field.

8. Accordingly, the writ petition is partly allowed. Both the impugned orders are quashed and set aside as the findings given are perverse to the record. The matter is remanded to Tahsildar, Nandgaon Khandeshwar with a direction to decide it afresh by giving opportunities to both the sides. The parties are permitted to place the survey plans on record.

9. Needless to mention that the learned Tahsildar shall decide the said application within a period of three months from the date of receipt of the copy of this order. All contentions of the parties are kept open. Rule is made absolute in the above terms. No order as to costs.

10. The parties to act upon the authenticated copy of this order.

(BHARAT P. DESHPANDE, J.)