



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

904 WRIT PETITION NO. 3789 OF 2024

Somnath Gopinath Shinde & anotherPetitioners

VERSUS

Subhash Krushnanath Bhand & othersRespondents

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Mr. D. R. Adhav, Advocate for the Petitioners.

Mr. B. A. Shinde, AGP for the State.

Mr. A. S. Tilve, Advocate for Respondent Nos. 1 and 2.

CORAM : R. M. JOSHI, J.

DATE : 8th APRIL, 2025.

PER COURT :

1. This petition takes exception to the order passed by the Tahsildar in Rasta Case No. 33/20222 dated 14.10.2022 and confirmation of the said order by Sub-Divisional Officer in Revision Application Nos. 354/2022 and 32/2022.

2. Contesting Respondents filed application under Section 5 of the Mamlatdars Courts Act before Tahsildar, Rahuri seeking removal of obstruction caused in the customary way going through Gat Nos. 150/1 and 37/1/1. Allegation made by the contesting Respondents before the Tahsildar is that the users of this land have

encroached upon the road by bringing the same under cultivation and thereby obstruction has been caused.

3. Petitioners as well as other Respondents in the original proceeding opposed the said application by denying any encroachment being caused by them. However, there is no dispute about the fact that road exists as claimed by the contesting Respondents herein.

4. Learned counsel for Petitioners original Respondents amongst other submissions raised objection to the impugned order on the ground that the Tahsildar has failed to provide sufficient opportunity of hearing to the Petitioners. To support his submission, he has placed reliance on certified copy of Roznama of the proceeding of Rasta Case No. 33/2022. This, according to him, indicates that no hearing has taken place before passing of the impugned order. According to him, on this sole ground, order impugned deserves to be set aside.

5. Learned counsel for contesting Respondents has attempted to support the impugned orders on merit. However, he

was no able to refute the allegation of learned counsel for Petitioners that the order impugned was passed by the Tahsildar on the very same day on which panchanama was drawn.

6. Without going into the merit of the case, prima facie perusal of the record indicates that panchnama was drawn by Tahsildar on 27.09.2022. As per Roznama recorded by the said authority, immediately after drawing said panchanama, the proceeding was closed for order. It is thus clear that the parties were not heard. This Court, therefore, finds substance in the contention of learned counsel for Petitioners that the orders impugned are passed without giving an opportunity of hearing to the Petitioners.

7. Learned counsel for Petitioners submits that alternate way is available to the Respondents. Insofar as the provisions of Section 5 of the Mamlatdars Courts Act are concerned, existence of alternate way cannot be considered. The only issue for consideration before the Tahsildar would be availability of customary way and obstruction thereto.

8. In the result, petition is allowed. Impugned orders are set aside. Rasta Case No. 33/2022 is relegated back to the Tahsildar for decision afresh. The Tahsildar not to look into the issue of alternate way. The proceedings be decided in accordance with Section 5 of the Act, on or before 10.05.2025. Parties are directed to appear before the Tahsildar on 15.04.2025.

(R. M. JOSHI)
Judge

dyb