



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

WRIT PETITION NO. 5909 OF 2024

Ashabai Babasaheb Gagare And Another
VERSUS
The Sub Divisional Officer And Others

Mr. V. V. Tarde, Advocate for Petitioners
Mrs. M. N. Ghanekar, AGP for Respondent Nos. 1 and 2
Mr. S. R. Andhale, Advocate for Respondent No. 3

CORAM : R. M. JOSHI, J.

DATE : 25th February, 2025

PER COURT :-

1. By consent of both sides, heard finally at the stage of admission.
2. This petition takes exception to the order dated 25.01.2024 passed in Revision No. 384/2022 by Sub Divisional Officer (for short "**SDO**"), Shrirampur confirming order dated 12.12.2022 passed in RASTA Case No. 48/2021 (68/2021) passed by Tahsildar, Rahuri.
3. Respondent No. 3 filed Rasta Case No.48/2021 (68/2021) against the petitioners claiming that he is owner and possessor of the land bearing Gut No. 264. He claimed that there is road from its northern side boundary. In the previous round of litigation on 18.10.2021, Tahsildar passed order directing the removal of obstruction. The said order came to be challenged under Revision Application No. 288/2021,

wherein SDO directed Tahsildar to decide the application afresh. Fresh enquiry was conducted and thereafter order came to be passed on 12.12.2022. Petitioners herein being aggrieved by the said order, filed Revision Application No. 384/2022 unsuccessfully. Hence, this petition.

4. Learned counsel for Petitioners submits that petitioner has raised specific ground before SDO that the contesting respondent has alternate way and the said way is only used. It is his submission that by his objection SDO confirmed order passed by Tahsildar. Thus, it is his submission that when there is alternative way available for the Respondent No. 3, there would be no justification to pass any order under Section 5 of the Mamlatdar's Courts Act, 1906 (for short "**the Act**"). Learned counsel for respondents supported the impugned orders. It is argued by learned counsel for contesting respondent that while entertaining application under Section 5 of the Act, Tahsildar is not required to see/consider availability or not of alternate way and only issue would be of customary way and obstruction thereof.

5. At this stage, it would be relevant to take note of provisions of Section 5 of the Act which reads thus :-

Section 5 - Powers of Mamlatdars' Courts

(1) Every Mamlatdar shall preside over a Court, which shall be called a Mamlatdars' Court, and which shall, subject to the provisions of Sections 6 and 26, have

power, within such territorial limits as may from time to time be fixed by the State Government, -

(a) to remove or cause to be removed any impediment, erected otherwise than under due authority of law, to the natural flow in a defined channel or otherwise of any surface water naturally rising in or falling on any land used for agriculture, grazing, trees or crops, on to any adjacent land, where such impediment causes or is likely to cause damage to the land used for such purpose or to any such grazing, trees or crops thereon;

(b) to give immediate possession of any lands or premises used for agriculture or grazing, or trees, or crops or fisheries, or to restore the use of water from any well, tank, canal or water-course, whether natural or artificial used for agricultural purposes to any person who has been dispossessed or deprived thereof otherwise than by due course of law, or who has become entitled to the possession or restoration thereof by reason of the determination of any tenancy or other right of any other person, not being a person who has been a former owner or part-owner, within a period of twelve years before the institution of the suit of the property or use claimed, or who is the legal representative of such former owner or part-owner :

Provided that, if in any case the Mamlatdar considers it inequitable or unduly harsh to remove or cause to be removed any such impediment or, to give possession of any such property or to restore any such use to a person who has become entitled thereto merely by reason of the determination of any such tenancy or other right, or if it appears to him that such case can be more suitably dealt with by a Civil Court, he may in his discretion refuse to exercise the power aforesaid, but shall record in writing his reasons for such refusal.

(2) Power to issue injunction.--

The said Court shall also subject to the same provisions, have power within the said limits 3[where any impediment referred to in sub-section (1) is

erected, or an attempt has been made to erect it, or, when any person is otherwise than by due course of law disturbed or obstructed, or when an attempt has been made so to disturb or obstruct any person, in the possession of any lands or premises used for agriculture or grazing, or trees, or crops, or fisheries, or in the use of water from any well, tank, canal or water-course, whether natural or artificial, used for agricultural purposes, or in the use of roads or customary ways thereto, to issue an injunction to the person erecting or who has attempted to erect such impediment, or causing, or who has attempted to cause, such disturbance or obstruction, requiring him to refrain from erecting or attempting to erect any such impediment or, from causing or attempting to cause any further such disturbance or obstruction.

(3) Suits to be filed within six months.--

No suit shall be entertained by a Mamlatdars' Court unless it is brought within six months from the date on which the cause of action arose.

(4) Cause of action.--

The cause of action shall be deemed to have arisen on the date on which the impediment to the natural flow of surface water or the dispossession, deprivation or determination, of tenancy or other right occurred, or on which the impediment, disturbance or obstruction, or the attempted impediment or disturbance or obstruction, first commenced.

Explanation. - The exercise by a joint owner of any right which he has over the joint property is not a dispossession, or disturbance of possession of the other joint owner or owners within the meaning of this section

6. In view of the provisions, this Court finds substance in the contention of the learned counsel for respondents that while deciding application under Section 5 of the Act, Tahsildar is required to consider

as to whether the customary way is available and the same is obstructed. The availability of the alternate way would be irrelevant for the decision of such application. Once there is evidence to show existence of customary way as obstruction thereof, Tahsildar gets jurisdiction to issue order of injunction.

7. As far as the facts of the case are concerned, the order passed by Tahsildar sufficiently demonstrates that there exist customary way from Gut No. 264 from its northern boundary. The statement of the son Laxman and Subhash recorded confirms the said fact. Apart from this, there is a sale deed dated 22.02.2016 with recitals indicating the existence of such road. Having regard to the said evidence on record, the order passed by Tahsildar cannot be faulted with. In revision, in absence of any exceeding of jurisdiction by Tahsildar or ignorance of material evidence on record, it was not open for SDO to cause interference in such order.

8. Hence, this court finds no reason to cause interference in the impugned order. Petition stands dismissed.

(R. M. JOSHI, J.)

bsj