



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

WRIT PETITION NO. 6982 OF 2022

Suraj Devchand Alias Devichand Agrawal And Others
VERSUS
Laxmibai Balnath Zinjurde And Others

Mr. V. R. Dhorde, Advocate for Petitioners
Mr. A. L. Kakade, Advocate for Respondent Nos. 1 to 8
Mr. B. A. Shinde, AGP for Respondent Nos. 9 to 11/State

CORAM : R. M. JOSHI, J.

DATE : 01st April, 2025

PER COURT :-

1. This petition takes exception to the order dated 02.07.2021 passed by Tahsildar in Rasta Case No. 39 of 2020 whereby the application filed under Section 5 of the Mamalatdar's Courts Act, 1906 (for short "the Act") for removal of obstruction came to be allowed. This order was confirmed by Sub-Divisional Officer (for short "SDO") in Revision Petition No. CR-29/2021. The petitioners/original respondents being aggrieved by these orders preferred this petition.

2. Facts as they appear from the record indicate that contesting respondents filed application under Section 5 of the Act with the averments that there exists customary way from the agricultural land of the petitioners

and that obstruction has caused by them for use of the said way. This contention is opposed by the petitioners/original respondents by filing reply denying existence of the way. In addition thereto, a specific objection raised with regard to the maintainability of the application on the ground of limitation.

3. Pursuant to the said application, panchanama was drawn on 19.03.2021 wherein it is found that the portion of the land in dispute has been encroached upon by the original respondent by cultivating the same. Tahsildar inspected spot and panchanama was drawn, it is held that there exist a customary way and the same has been obstructed by carrying out cultivation thereon by the petitioners herein. This order dated 02.07.2021, was taken exception by filing revision before SDO unsuccessfully.

4. Learned counsel for Petitioners has attempted to convince this Court on merit of the order by contending that the pleadings of the plaintiffs are not sufficient to substantiate their case. It is his submission that even from spot panchanama, it cannot be said that there exist any road on the boundary, as the map filed along with the panchanama only indicates existence of boundary between Shivar Hilalpur and Shivar Koradgaon and not road. It is his submission by referring to the said map that there are trees, pipelines so also

the encroachment caused by the owner of Gat No. 86 and, therefore, this cannot be considered as a way. He further argued that there is alternate way available for the contesting respondents. Without prejudice to these submissions, he drew attention of the Court to the specific application moved before the SDO raising objection to the order passed by Tahsildar. It is argued that issue of limitation was not considered by both authorities and hence, in any case, the order impugned cannot be sustain. He also sought to challenge the impugned order on the ground of the availability of alternate way for the respondents.

5. Learned counsel for contesting respondents supported the impugned order on merit. It is his contention that in the proceedings, under Section 5 of the Act, respondents were required to establish existence of customary way and obstruction thereof by the petitioners and since the same is established, the Tahsildar was duty bound so direct removal of obstruction which has been rightly done in this case. It is his submission that availability of alternate way is of no consequence. He, however, was unable to show from the impugned orders issue of limitation being dealt with though it before Tahsildar.

6. Before considering the submissions about the limitation, this Court would like to take into account the submissions on merit. It is

specifically averred in the application before Tahsildar that there exist way which was used since the time of the predecessor of the respondents. There is also allegation that during the life time of the father of the petitioners, no obstruction was caused to the said way. However, the present petitioners have recently obstructed the way. Hence, the proceeding for removal of obstruction came to be filed. The petitioners before Tahsildar have denied existence of the way so also case of the respondents. Undisputedly, Tahsildar drew spot panchanama and map annexed thereto clearly indicates that there is a way available between Shivar Koradgaon and Shivar Hilalpur. Pertinently, except for the area held by the petitioner, there is no cultivation done in this portion. On land of any other agriculturist, if it was not a way, it is not portable that other agriculturist would not bring that land under cultivation. The cultivation caused by petitioners only on the strip of the land indicates that the same is done with a view to cause obstruction in the way. This Court, therefore, finds no perversity in the findings recorded by Tahsildar with regard to the existence of the way and obstruction thereto caused by petitioners. Thus, on merit, petitioners have no case to make out.

7. Petitioners however have raised specific issue with regard to the limitation for filing of the application under Section 5 of the Act. In this regard, reference could be made to the provision of Section 5 Sub-section 3 which

requires the suit to be filed within six months of obstruction. According to this provision, Mamalatdar does not have authority to entertain the suit itself if not instructed within six months from the date of cause of action. In spite of specific issue being raised by the petitioner, Tahsildar has not dealt with the same and proceeded to pass impugned orders. The authorities below in spite of these specific submissions, have preferred not to deal with the same.

8. In view of provisions of Section 5(3) of the Act, the issue of limitation of filing of the suit under the said provision becomes relevant. Once, such issue is raised which is obligatory on the part of the Tahsildar to frame issue to that effect and to decide the same. Hence, though this Court finds no reason to cause interference in the order passed by Tahsildar on merit and this Court confirms the said order so also the order passed by SDO, the proceedings are relegated back to Tahsildar only for the purpose of deciding the issue of limitation raised by petitioner. As a result of this, petition stands partly allowed to the proceedings. Rasta Case No. 39/2020 is relegated back to Tahsildar for deciding the issue of limitation as raised by Petitioner.

9. It is clarified that the Tahsildar is expected to decide the issue of limitation only. Tahsildar is prohibited from dealing with any other issue. Depending upon the outcome of the said issue, Tahsildar to pass appropriate

order. Tahsildar to decide this issue within a period of one month from today.

Learned AGP is requested to communicate this order to Tahsildar.

(R. M. JOSHI, J.)

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