



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7469 OF 2016

Shobha Dnyandev Ruikar And Another

VERSUS

The State Of Maharashtra And Others

- Mr. D. R. Kale h/f Mr. M. R. Khutwad, Advocate for the Petitioners
- Mr. S. G. Sangle, Addl. GP for the Respondent Nos. 1 to 3/State
- Mr. D. A. Mane h/f Mr. P. A. Bharat, Advocate for the Respondent Nos. 4 to 6

CORAM : R. M. JOSHI, J

DATE : SEPTEMBER 10, 2025

PER COURT :

1. This Petition takes exception to the order passed by Tahsildar dated 31.10.2015 under Section 5(2) of the Mamlatdar's Courts Act, 1906 (for short '**the Act**') and conformation of the said order by Sub-Divisional Officer ("**SDO**") on 31.03.2016.

2. An Application was filed by the Petitioner before Tahsildar, Shevgaon under Section 5 of the Act for seeking direction for removal of the obstruction of the customary way available for the Petitioner to go from Gut No. 256/2.

3. There is no dispute about the fact that the

Tahsildar initially passed order rejecting Application. This order came to be challenged before SDO, Pathardi. SDO by order dated 26.01.2015 set aside the order and directed re-hearing of the Application. In the year 2015, once again spot inspection was done. It is recorded in the said spot panchnama that there are no marks indicating existence of way. It is further recorded in the spot panchnama that son of the Petitioner's son is owner of Gut No. 186 and there is a way available through this gut for the Petitioner. Relying upon the said panchnama Tahsildar rejected Application. This order was unsuccessfully challenged before SDO. Hence, this Petition.

4. Learned Counsel for the Petitioner submits that admittedly Gut No. 256 was one land before its partition. It is his submission that in the partition, property was divided as Gut No. 256/1 and 256/2. It is his submission that except for the way from Gut no. 256/2, there is no other way available for the Petitioner to go to Salvadgaon to Ghotan road. He relied upon the sale deed executed by the erstwhile owner of Gut No. 256/1 indicating existence of the

road. It is his submission that without considering these facts and only on basis of availability of the way from land belonging to the son of the Petitioner, present Application came to be rejected.

5. Learned Counsel for contesting Respondent supported the impugned orders. It is his submission that the owner of Gut No. 256/1 has no right to state that there exists any road from Gut No. 256/2. It is his submission that the spot inspection report indicates that there is no existing road in Gut No. 256/2. He drew attention of the Court to both panchnamas carried out in the year 2013 as well as in the year 2015. According to him, there is existing structure on the land of the Respondent, which according to his submissions indicates that there exists no road.

6. There is no dispute about the fact that land Gut No. 256 was one piece of land prior to the partition thereof between two brothers i.e., original owners. Gut Nos. 256/1 and 256/2 were carved out after partition from this land. Perusal of the map placed on record indicates that for the occupiers of Gut No.

256/1, except for the way through Gut No. 256/2 there is no other way available to proceed to Salvadgaon to Ghotan road. It is brought to the notice of this Court that Gut No. 256/1 is purchased on 30.07.2004, whereas son of the Petitioner purchased land bearing Gut No. 186 on 07.06.2005. The purchase of land even abutting to the land of Petitioner is inconsequential. Merely because son of the Petitioner purchased property abutting to the Gut No. 256/1, the said fact cannot become a ground for rejecting Application and to hold that way is available from the said land.

7. The availability of any alternate way is immaterial for decision of proceedings under Section 5(2) of the Act. There is no need to emphasize that the provisions of the Act have been made in order to ensure that the agriculturists are not prohibited from use of customary way to approach the fields. Hence, enquiry contemplated therein is summary in nature. It is, however, absolutely necessary for Tahsildar to conduct a proper enquiry and if necessary to record statements of witnesses in order to ascertain existence of way and obstructions caused thereto. The spot inspection done,

after a period of two years of cause of action and only for the reason there are no signs indicating the existence of way, it cannot become a ground for rejection of the Application. Similarly, due weightage ought to have been given to the sale deed executed by the vendor, who was joint owner of entire Gut No. 256.

8. In the aforestated circumstances, since Tahsildar has failed to make appropriate inquiry impugned orders cannot sustain. Petition stands allowed in terms of prayer clause "C" and "D". Impugned orders are set aside. Proceedings are relegated back to Tahsildar, Shevgaon for decision afresh. It is expected from the Tahsildar that statements of witnesses would be recorded in order to ascertain the fact of existence of way from Gut No. 256/2 and order is passed after due consideration of material on record.

9. Since the proceedings is of year 2013, Tahsildar shall decide the said proceedings within a period of three months from today. Parties to appear before Tahsildar on 29.09.2025. No separate notice shall be issued to the parties.

(R. M. JOSHI, J.)