



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10792 OF 2024

Bhausahab Damodhar Naikwadi And Another
VERSUS
The Sub Divisional Officer And Others

- Mr. V. Y. Bhide, Advocate for the Petitioners
- Mr. S. N. Kendre, AGP for the Respondent Nos. 1, 2 and 11/State
- Mr. S. K. Shinde, Advocate for the Respondent Nos. 3 to 10

CORAM : R. M. JOSHI, J
DATE : MARCH 17, 2025

PER COURT :

1. This Petition takes exception to the order passed by the Tahsildar in Rasta Case No. 17/2022 under Section 5 of the Mamlatdar's Courts Act, 1906 (for short 'the Act') whereby the application filed by the contesting Respondents came to be allowed. This order was taken exception before the Sub-Divisional Officer, Sangamner in Revision Application No. 263/2023 who has confirmed the order passed by the Tahsildar.

2. It is the case of the Petitioners that the Respondent Nos. 3 to 10 filed the Rasta Case No. 17/2022 before the Tahsildar, Akole with the contention

that there is pre-existing way for approaching to their land through the land of Petitioners and the other way has been obstructed by them. Pursuant to the said application, spot inspection was conducted by the Tahsildar. Petitioners made grievance in respect of the said inspection as well as the order passed by the Tahsildar relying upon the spot inspection report. It is the case of the Petitioners that without there being any proof of existence of way, the order came to be passed, which is not sustainable.

3. Learned Counsel for the Petitioners has drawn attention of the Court to the proceedings conducted before Tantamukti Committee wherein according to him a new way was agreed between the parties subject to the measurement of the respective survey numbers. It is his submission that the application filed by the contesting Respondents before the Tantamukti Committee indicates that there is no existing way available for these Respondents. It is his submission that these aspects as well as issue with regard to the partition has not been substantiated before Tahsildar. Apart from this, he takes exception to the issue of limitation in

maintaining proceedings before Tahsildar.

4. Learned Counsel for contesting Respondents supported the impugned orders. According to him, the application filed before Tantamukti Committee need not be considered to be an impediment for the Respondents to file application under Section 5 of the Act. According to him, having regard to the application made by not legally trained person, the contents therein shall not be considered to be admissions. He drew attention of the Court to the spot panchnama which according to him indicates that their existed a way in the land belonging to the Respondents and the way which continues thereafter from the agricultural land of the Petitioners is not seen only for the reason that it was under cultivation.

5. There cannot be any dispute made with regard to the jurisdiction of the Tahsildar under Section 5 of the Act. Once a party files application within a period of six months of the accrual of the cause of action and is in a position to establish existence of customary way and obstruction caused thereof, the jurisdiction lies with the Tahsildar to pass appropriate order for

removal of obstruction. Herein this case, though it is contended in the application that on 08.03.2021 for the first time obstruction was caused and the application is filed on 08.06.2022, this Court finds substance in the contention of the learned Counsel for Respondents that in view of the order of the Hon'ble Supreme Court in case of SUO MOTU WRIT PETITION (C) NO.3 OF 2020, period of limitation stood extended from March, 2020 to February, 2022. Thus, it cannot be said that the proceeding is filed beyond limitation.

6. As far as other contention of the Petitioners are concerned, the application made to the Tantamukti Committee need not be construed to be an impediment to the Respondents from filing application under Section 5 of the Act. It needs to be considered that the said application is filed by a layman contending that he has no way available. This Court, therefore, finds substance in the contention of the Petitioners to that effect.

7. However, it is found that the Tahsildar has held that the entire land was joint family property, which came to be partitioned subsequently. By taking

this to be a basis, it is held that there exists a way in the land came to the share of Respondents whereas the way is not seen because it is under cultivation in the land of the Petitioners. There has to be some evidence led by the Respondents in order to show that before partition any such way was in existence. No such evidence is placed on record. There is no dispute about the fact that the land was one at particular point of time and divided pursuant to subsequent partition. It is thus open for the Respondents to substantiate their contention before Tahsildar.

8. In the light of aforesaid facts, the order passed by the Tahsildar and confirmed by the SDO deserves to be set aside and same are set aside. Rasta Case No. 17/2022 is relegated back to Tahsildar for decision afresh. It is open for both sides to lead appropriate evidence to substantiate their respective contentions. Since the application is of year 2022, Tahsildar is directed to decide the said application within a period of two months from today.

9. Petition stands disposed of in above terms.

(R. M. JOSHI, J.)