



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

908 WRIT PETITION NO. 14137 OF 2024

SUBHASHCHANDRA BHAVARLAL JAIN
VERSUS
YOGESH JAWAHARLAL RAJPUT AND OTHERS

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Mr. D. S. Bagul, Advocate for the Petitioner
Mr. S. N. Kendre, AGP for the respondent/State

CORAM : R. M. JOSHI, J.
DATE : 10th JANUARY, 2025

PER COURT :-

1. Heard.
2. This petition takes exception to order dated 4th January, 2022 passed by the Sub Divisional Officer, Shirpur in RTS Revision Application No.43 of 2020, whereby the order passed by Tahasildar in Vahiwat Suit No. 19 of 2016 dated 14th September, 2020 was confirmed.
3. The facts led to the filing of this petition can be narrated as brief as under:

Respondents filed suit under Section 5 of the Mamlatdars' Courts Act (in short the 'Act') before Tahasildar, Shirpur. It was his contention that he has the customary way for entering into his agricultural land through the land belonging to the petitioner. It is specifically stated that on 07/06/2016, obstruction was caused by the

petitioner for use of the said way. Within six months of the said obstruction the suit came to be filed on 14/06/2016. Petitioner herein appeared before the Tahasildar and filed his say contending that the way sought by the plaintiff is not customary way. Apart from this it is averred that there is alternate way available for the respondents, the Tahasildar by order dated 14/09/2020 accepted the contention of respondents and directed the petitioner herein to move obstruction and to permit the respondents to use the way. This order came to be challenged before the Sub Divisional Officer under Section 23(2) of the Act in Revision Application No. 43 of 2020. It is contended therein that without giving opportunity to the petitioner, order came to be passed by Tahasildar. He also took objection to the manner in which the proceedings were conducted before Tahasildar. There is also allegation that Tahasildar had obtained signatures on blank papers and by misusing the same, the spot inspection report is prepared. It is also alleged that Tahasildar did not carry out any spot inspection. The Revisional Authority did not accept the contention of the petitioner and rejected the revision by passing impugned order.

4. Learned counsel for the petitioner submits that the petitioner has specifically taken a plea before the Tahasildar that there is alternate road available for the respondents and without deciding the said issue, it

was not open for the Tahasildar to pass order of direction of removal of obstruction and permitting the respondent to use the said way. To support his submission, he placed reliance on the judgment of Co-ordinate Bench of this Court in ***Writ Petition No. 2109 of 2023 (Udhav Shamrao Patil Versus Ashok Chandrakant Dhas and others)***, dated **03/07/2024**. He placed reliance on the observations made by this Court in paragraph no. 7 of the said order.

7. Per contra, respondents have denied existence of the customary way as claimed. Perusal of the evidence on record shows that except spot panchnama carried by Talathi/Circle Officer, no evidence is recorded on the point of existence of the customary way. The Tahsildar was under obligation to cause spot inspection, record statements of the land holders from adjacent gat numbers and also verify village record. In this background, Sub-Divisional Officer is justified in remanding the matter for re-consideration. Therefore, no fault can be found in the impugned order. However, it would be apposite to observe that spot panchnama recorded by the Circle Officer and Talathi depicts that petitioner has no other approach way except claimed by him from common bandh of gat no.484 and 487. It cannot be disputed that, in case of survey bandhs, there cannot be obstruction to use it as path way. However, petitioner claims that he was using common bandh as customary-cart way and he do not have alternate way. In this background, it would be appropriate for Tahsildar to find out if customary way as claimed by the petitioner ever existed, and, in case, he comes to positive conclusion, remove obstruction and grant prayers as made in the application. However, if he comes to the conclusion that petitioner has no alternate cart-way to carry out his agriculture operations, by giving appropriate notices to all the concerned, Tahsildar may exercise his jurisdiction under 143 of the MLR Code by following due process of law.

5. There is no dispute about the fact that the proceedings before the Tahasildar was under Section 5 of the Act. Perusal of Section 5 of the Act does not indicate that the Tahasildar is required to consider the alternative ways available for the parties. Sub section 2 of Section 5 of the Act empowers the Tahasildar to issue injunction when any person otherwise than by due course of law disturbed or obstructed or when an attempt has been so to disturb or obstruct any person, in the possession of any lands or in the use of roads or customary ways thereto. The judgment relied upon by the learned counsel for the petitioner was dealing with the fact that the Sub Divisional Officer had remitted back the proceedings to Tahasildar on the ground that the panchnama was not drawn by Tahasildar himself but its sub ordinate officer. It is in this context observation is made there that Tahasildar was under obligation to carry out spot inspection, record statements of land holders of adjacent gut number and also to verify village record. This cannot be construed as Tahasildar being under obligation to find out whether any alternate way is available to the parties.

6. The reference is made in portion of paragraph no. 7 of the said judgment is also misplaced as in the facts of the said case it was expected by this Court that the Tahasildar may exercise the jurisdiction under Section 143 of the Maharashtra Land Revenue Code which

contemplates creation of the road. This observation seems to have been made in the context of the peculiar facts involved therein.

7. As far as the issues raised before the Revisional Authority are concerned, the Revisional Authority order has held that the proceedings before the Tahasildar were conducted properly. It is also observed that petitioner as well as respondents appeared before the Tahasildar from time to time and their signatures are also found on the record. The Sub Divisional Officer has refused to accept the contention of the petitioner that blank signatures were obtained of petitioner. This is not the case wherein the objection is raised by the petitioner about Tahasildar not complying with the mandatory provisions of the Act for the purpose of conducting the proceeding. The scope of the revisional authority was limited to decide as to whether there is exceeding of jurisdiction or non exercise therein. The findings recorded by Revisional Authority are not perverse, in order to cause interference therein, in exercise of writ jurisdiction.

8. Having regard to the above discussion, this Courts finds no merit in the petition. Hence, petition stands dismissed.

(R. M. JOSHI, J.)

ssp