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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.338 OF 2014

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| 1. | Narayan Kisan Shelke
Age - 53 years, Occ - Agriculture | PETITIONERS |
| 2. | Bhagwan Kisan Shelke
Age - 51 years, Occ - Agriculture | |
| 3. | Shivaji Kisan Shelke
Age - 47 years, Occ - Agriculture | |
| 4. | Kisan Shankar Shelke
Age - 75 years, Occ - Agriculture | |
| 5. | Kalawati Kisan Shelke
Age - 69 years, Occ - Agriculture | |
| | All R/o Koregaon, Taluka - Karjat
District - Ahmednagar | |

VERSUS

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| 1. | The State of Maharashtra
Through Secretary,
Revenue and Forest Department,
Mantralaya, Mumbai | RESPONDENTS |
| 2. | The Tahsildar
Shrigonda, District - Ahmednagar | |
| 3. | The Sub Divisional Officer
Karjat Taluka - Karjat
District - Ahmednagar | |
| 4. | Vishwanath Shankar Shelke
Age - 75 years, Occ - Agriculture | |
| 5. | Sambhaji Vishwanath Shelke
Age - 60 years, Occ - Agriculture | |
| 6. | Laxman Vishwanath Shleke
Age - 57 years, Occ - Agriculture | |

7. Dattu Vishwanath Shelke
Age - 54 years, Occ - Agriculture

8. Gokul Vishwanath Shelke
Age - 51 years, Occ - Agriculture

Respondents No.4 to 8 R/o Koregaon,
Taluka - Karjat, District - Ahmednagar

9. Pandurang Gopala Dhande
Age - 75 years, Occ - Agriculture
R/o Dhandewadi, Taluka - Karjat
District - Ahmednagar

10. Abasaheb Vitthal Dhande
Age - 45 years, Occ - Agriculture
R/o Dhandewadi, Taluka - Karjat
District - Ahmednagar

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Mr. V. P. Latange, Advocate for the Petitioners
Mrs. P. V. Diggikar, AGP for Respondent - State
Mr. Yuvraj Kakade h/f Mr. N.V. Gaware, Advocate for Respondents
No.4 to 8

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[CORAM : MANJUSHA DESHPANDE, J.]

RESERVED ON : 17th JANUARY, 2025

PRONOUNCED ON : 31st JANUARY, 2025

JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard finally with the consent of learned Advocates for the parties.

2. Order dated 20th July, 2013 passed by Sub Divisional Officer, Karjat in Revision No. 1 of 2009, thereby confirming order 13th December, 2008 passed by Tahsildar, Shrigonda, in Rasta

Case no. 14 of 2006, is challenged in the present Writ Petition.

3. The Petitioners are the original Respondents No.1 to 5 in Rasta Case No. 14 of 2006. Respondents No.4 to 8 are the Complainants / Applicants in Rasta Case No. 14 of 2006. Rasta Case No. 14 of 2006 was filed by Respondents No. 4 to 8 under section 5 (2) of the Mamlatdars' Courts Act, 1906 claiming that the present Petitioners have obstructed the road, which is passing through Gut Nos. 620, 621, 623, 625, 626 and 622. Consequently making prayer that the obstructions created by the present Petitioners be directed to be removed and make available the approach to field of present Respondents No.4 to 8. Spot Panchanama was conducted on 18th October, 2006 in the presence of Panchas and respective parties. It is stated in the Panchanama that no previous way exists on the alleged boundaries of Gut No. 622 and Gut No. 619 to 626. In view of the Panchanama conducted, temporary injunction was granted by the Tahsildar on 3rd November, 2006 in favour of Respondents No. 4 to 8. However, the temporary injunction was vacated by the Tahsildar by order dated 26th January, 2007.

4. It is the contention of the Petitioners that, since the temporary injunction was vacated by Tahsildar Karjat, the Respondents sought transfer of the Rasta Case from Tahsildar,

Karjat to Tahsildar, Shrigonda. It is the contention of the Petitioners that, after the case was transferred to Tahsildar, Shrigonda, he visited the spot on 13th December, 2008, without issuing notice to the present Petitioners. Further objection is raised to Panchanama on the ground that, 13th December, 2008, being a public holiday, Panchanama could not have been conducted on public holiday.

5. Learned Advocate for the Petitioners contends that the Panchanama which was conducted on 13th December, 2008 i.e. on public holiday, shows that there is road available, which passes from the field of the Petitioners. The Petitioners also raised objection about the Panchanama dated 13th December, 2008 on the ground that the Panchanama though shown to have been signed by one V. S. Mahajan as witness and resident of Koregaon, according to the Petitioners V. S. Mahajan is not the resident of village Koregaon. As such, the person, who does not reside in the village is shown to be the Pancha, which is false and bogus.

6. It is further submitted that Tahsidlar Shrigona, without giving any intimation or notice, proceeded to pass judgment and decreed the suit filed by Respondents No. 4 to 8, thereby granting injunction against the Petitioners directing not to create

obstruction for the use of the road by the Respondents.

7. The Petitioners being aggrieved by the order of the Tahsildar, Shrigonda, filed Revision No. 1 of 2009 before the Sub Divisional Officer, Karjat. The Revision was rejected by the Sub Divisional Officer, Karjat, without assigning any reason. By the said order dated 7th July, 2010, the Sub Divisional Officer, Karjat has confirmed the order passed by the Tahsildar, Shrigonda.

8. Being aggrieved and dissatisfied by the order dated 7th July, 2010, passed by the Sub Divisional Officer, Karjat in Revision No. 1 of 2009, the Petitioners preferred Writ Petition No. 7773 of 2010 before this Court. This Court, after hearing the parties, partly allowed the Writ Petition, and remanded the matter back to Sub Divisional Officer, Karjat, and directed the Sub Divisional Officer to decide the Revision *de novo*. It was observed by this Court that the order passed by the Sub Divisional Officer, Karjat is not a reasoned order. This Court directed the Sub Divisional Officer, Karjat to hear and decide the Revision within three months.

9. It is the contention of the Petitioners that, after the revision application was remanded, the Petitioners had submitted written submissions before the Sub Divisional Officer, Karjat, reiterating the issues, which were raised before the Tahsildar, as well as the

Revisional Authority. According to the Petitioners, though Respondents No.4 to 8 have claimed that there is a customary way on the bandh between Gut No. 620, 621, 623, 625, 626 and 622 towards east west side, however, the fact is that no such road exists on the bandh. Panchanama conducted on 18th October, 2006, clearly discloses that there is no such customary road, which is in existence. Therefore, considering that the Panchanama dated 18th October, 2006, wherein observation has been made that there exists no road, reflects the actual position existing on that day. Since the order of vacating interim relief was passed against the Respondents, they have sought transfer of the case and after transfer, without giving any notice or previous intimation to the Petitioners, Panchanama was conducted on 13th December, 2008. It was a second Saturday and a public holiday. It is further alleged that the Respondents are hand in glove with Tahsidlar Shrigonda, therefore, they have managed to conduct Spot Panchanama on a holiday, without giving any intimation to the Petitioners. The false and bogus Panchanama shows that there is a cart way of 7 to 8 feet, which passes through Gut No. 622 and 620 upto Bandh of Gut No. 626. Even the witness to the Panchanama one Shri Mahajan is a bogus witness. The Panchanama is conducted without following the principles of natural justice with no opportunity to lead evidence.

10. It is the contention of the Petitioners that, provisions of sections, 9, 10, 11 and 14 of the Mamlatdars' Courts Act are not followed by the Tahsidlar, while passing the order. The Sub Divisional Officer has passed the order in hasty manner.

11. It is further stated in the written submissions that, considering that there were two conflicting Panchanamas existing on record, the Tahsildar, Shrigonda ought to have again conducted the Panchanama in order to ascertain the actual position on the spot, as to whether the road exists wherein obstruction is allegedly created by the Petitioners. On the basis of record as well as the objections which were raised by the Petitioners, the Revision Application was decided and the Sub Divisional Officer, Karjat, by the impugned judgment dated 20th July, 2013 rejecting the Revision No. 1 of 2009 and confirming the order passed by the Tahsildar, Shrigonda in Rasta Case No. 14 of 2006.

12. Learned Advocate for the Petitioners submits that the Petitioners had submitted written submissions before the Sub Divisional Officer, Karjat and in the said submissions the Petitioners had raised legal issues, which are not at all dealt with by the Sub Divisional Officer while deciding the Revision. According to learned Advocate for the Petitioners, in fact, after

remand of the matter, as per directions of this Court in Writ Petition No. 7773 of 2010, *de novo* inquiry should have been conducted by the Sub Divisional Officer through Tahsildar, which has not been conducted, therefore, it is contrary to the directions given by this Court. He also raises objection that issues were not framed by the Sub Divisional Officer, as contemplated under section 19 of the Mamlatdars' Courts Act. Learned Advocate for the Petitioners has submitted that as per the objections raised by the Petitioners in the written submissions, order is not in accordance with the provisions of the Mamlatdars' Courts Act and in fact, the first Panchanama conducted on 18th October, 2006 reflects the correct position existing on the spot, which does not show any existing road. Therefore, making available the road, which does not exist, is not contemplated under section 5 (2) of the Mamlatdars' Courts Act.

13. Learned Advocate Shri Yuvraj Kakade for Respondents No.4 to 8, has opposed the prayers made by the Petitioners. According to learned Advocate for Respondents No.4 to 8, Tahsildar, Shrigonda has passed order dated 13th December, 2008, after following due procedure and issuing notice to the Petitioners, by adhering to the principles of natural justice. It is his contention that since proceedings before the Tahsildar, Shrigonda were not within the jurisdiction of Tahsildar, Shrigonda, therefore, on

account of administrative difficulties, he decided to conduct the Panchanama on 13th December, 2008. Notices were accordingly issued on 26th November, 2009 for the parties to remain present on 13th December, 2008. The notices were duly served on the Petitioners and it is acknowledged on the receipt by affixing signature. So far as objection to the witness to the Panchanama Mr. Mahajan is concerned, according to learned Advocate for Respondents No.4 to 8, he is not stranger to the village, but he is owner of the adjoining land gut No. 627 and he was very much present during the Panchanama dated 13th December, 2008.

14. Learned Advocate for Respondents No.4 to 8 submits that on 13th December, 2008, Petitioners No.1 to 4 were very much present and their statement was recorded before Tahsildar, Shrigonda. So far as grievance regarding conducting Panchanama on public holiday is concerned, it is resisted by the learned Advocate for Respondents contending that since the Petitioners were very much present on the day of Panchanama upon receiving notice, they have not raised any objection about conducting Panchanama on a public holiday, therefore, now raising objection regarding conducting Panchanama on public holiday is an afterthought. This being a frivolous and *mala fide* objection, it does not deserve consideration.

15. Joint statement of the Petitioners has been recorded during the Panchanama, wherein they have categorically stated that Gut No. 624 and 626 are owned by them and there was a customary road which was in existence for approaching Gut No. 626, which passes through Gut Nos. 622, 620, 625, 623 and 626. That road was customary cart track, which was passing from bandh of Gut No. 625 and 623 and obstruction is caused on the said over near Gut No. 621 on which tamarind tree exits. The road has further been obstructed from the Tamarind tree. The road has been ploughed between Gut No. 625 and 621 and hence, the Respondents have filed application for alternate new road. According to them the application filed by Respondents is not maintainable. After recording statements of the parties present, Tahsildar, Shrigonda has held that there exists a 7 to 8 feet wide road. Hence, there is no substance in the objections raised by the Petitioners. It is therefore, requested that the Writ Petition deserves to be dismissed.

16. Respondent No.3 has filed affidavit opposing prayers made in the Writ Petition. According to Respondent No.3, Panchanamas were prepared by Tahsildar, Shrigonda and Karjat on 22nd May, 2007 and 13th December, 2008, respectively. In both the Panchanamas, it was found that there exists road on eastern band of Gut No. 621. Therefore, taking into consideration

existence of road, the order has been passed, which is just, legal and proper. It is submitted that the Petitioners were present during the Panchanama conducted on 13th December, 2008, along with the witnesses.

17. According to learned AGP, so far as objection regarding passing of the order in a hasty manner is concerned, the Mamlatdars' Courts Act provides that any kind of obstruction to cultivation operations should be removed in eight days. It is for the facility of agriculture operation. Therefore, there is nothing illegal in the proceedings conducted by Tahsildar. Learned AGP further submits that the decision of the Sub Divisional Officer, Karjat is on the basis of Panchanama prepared by Tahsildar on 22nd May, 2007. The Panchanama shows existing raw cart road from Gut No. 619 and well in Gut No. 621. Even Panchanama conducted on 13th December, 2008 shows existing road on eastern bandh of Gut No. 621, which was further converted into pathway. This pathway was one cart lane road. The other lane of the cart road is not in use due to flow of water. The existing road is obstructed by the flow of water for irrigating some of the area. Since, already existing way is obstructed by using the way for the course of water, in order to facilitate irrigation of some of the area, therefore, the order of injunction passed by the Tahsildar is just, legal and proper. Hence, Respondent No.3 has supported

the order passed by the Sub Divisional Officer, Karjat as well as Tahsildar, Shrigonda.

18. After hearing the learned Advocates for the respective parties, the first point which arises for consideration is that, whether the order passed by the Sub Divisional Officer, after remand of the matter by this Court, is just, legal and proper and is passed in accordance with the directions issued by this Court? This court has passed an order remanding the matter to the Sub Divisional Officer and it was to be decided by the Sub Divisional Officer within the framework of powers conferred on him. So far as powers of revision are concerned, the Revision is filed under section 23 of the Mamlatdars' Courts Act. Since it is an appellate Court, powers of Revisional Court are limited to the extent of ascertaining legality and correctness of the order passed by the Tahsildar.

19. This Court, while remanding the matter, has made observations that the order passed by the Sub Divisional Officer is not a reasoned order. Therefore, the matter was remanded to Sub Divisional Officer to consider the record and arguments of the respective parties, which were already on record and to pass a reasoned order. After the matter was remanded and the Petitioner has filed written submissions, the Sub Divisional Officer

has considered the submissions of the respective parties by affording opportunity of hearing to them. He has recorded written submissions which were submitted by the respective parties and thereafter framed points, which were required to be determined. On the basis of written submissions made by the respective parties, the first issue which was framed was;

(i) Whether the disputed road is in actual use by the applicant?

The Sub Divisional Officer, on the basis of Panchanamas conducted on 22nd May, 2007 and 13th December, 2008 answered the issue in affirmative holding that there appears a cart track from Gut No. 619 to the well of Gut No. 621, there is 7 to 8 feet wide road, which is in existence up to Gut No.621 till Tamarind tree. However, on the eastern side, there is pathway as well as single cart track. There also exists pathway between Gut No. 625 and 622. The Sub Divisional Officer has finally observed that since the Respondents do not have any other road available for their use, it seems that it is in use of the Respondents.

20. The next issue which was framed was;

(ii) Whether without issuing notice and conducting Panchanama on holiday, the Panchanama and the order that followed is a valid order?

The Sub Divisional Officer has rightly observed that since

Panchanama was conducted after issuing due notice to the parties, who were very much present and their presence has been acknowledged on the notices as well as on the statements, which were recorded on that day. There does not seem to be any valid ground for entertaining the objection. Even as regards Pancha witness, it is stated that he belongs to the same village and is the owner of adjoining land Gut No. 627. So far as objection regarding conducting the Spot Inspection and Panchanama and recording statements on the same day and passing order within 8 days is concerned, according to the Sub Divisional Officer, considering the fact that the matter was transferred from Tahsildar Karjat to Tahsildar, Shrigonda and there was already delay in passing appropriate orders, there is no substance in the objection raised by the Petitioners in this regard.

21. After taking into consideration the two Panchanamas, which are on record, it is observed by the Sub Divisional Officer that he does not find any conflict in the two Panchanamas, which were conducted on 22nd May, 2007 and 13th December, 2008. On the basis of two Panchanamas, the Sub Divisional Officer has recorded finding that from the two Panchanamas, it is apparent that there is pathway up to tamarind tree, which exists to the eastern side of Gut No. 621 and further from that tree there

appears a pathway, which is further obstructed by releasing water for irrigating fields which has created obstruction. Hence, the Sub Divisional Officer has come to the conclusion that the order passed by the Tahsildar Shrigonda does not deserve any interference.

22. Upon perusal of the order passed by the Sub Divisional Officer, intent of the order of this Court while remanding the matter back is very much complied by the Sub Divisional Officer. After receiving written submissions the Sub Divisional Officer has framed points for determination as well as considered the record which was available. So far as objection of the Petitioners regarding non compliance of section 9 of the Mamlatdars' Courts Act is concerned, he has raised objection that the Tahsildar has not examined the Complainant / Applicant on oath, as per section 9 of the Act. Upon going through section 9 of the Act, it is evident that it provides that where the plaint does not contain particulars specified in section 7 of the Act or is unnecessarily prolix, the Mamlatdar shall forthwith examine the plaintiff upon oath and ascertain from him such of the particulars specified in section 7 as are not clearly and correctly stated in the plaint and shall reduce the examination to writing in the form of an endorsement on or annexure to the plaint which shall thereupon be deemed to be part of the plaint.

23. So far as objection regarding non adherence to the provisions of the Mamlatdars' Courts Act is concerned, the Sub Divisional Officer has observed that considering the urgency in the matter, which was pending since long, the Tahsildar, Shrigonda has promptly acted and conducted spot inspection and Panchanama and also recorded statements and has passed an order within 8 days in order to facilitate removal of obstruction from the road and there is nothing wrong in the order. It is also observed that the Tahsildar, Shrigonda had passed order adhering to the procedure provided under the Mamlatdars' Courts Act. Therefore, the objection regarding non adherence has been turned down.

24. The Sub Divisional Officer, after remand of the matter by this Court, has framed issues and accordingly answered them. He has dealt with each and every issue raised by the Petitioners. Hence, in my opinion there is no reason for causing any interference in the concurrent findings recorded by two authorities in favour of the Respondents, by exercising powers under Article 227 of the Constitution of India. Hence, the writ Petition is dismissed.

[MANJUSHA DESHPANDE]
JUDGE