



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 891 OF 2022

Vaibhav Balkrushan Bhujadi And Others
VERSUS
The Sub Divisional Officer And Others

- Mr. R. R. Karpe, Advocate for the Petitioners
- Mr. D. B. Bhangre, AGP for the Respondent Nos. 1 and 2/State
- Mr. V. D. Hon, Senior Advocate i/by Mr. A. V. Hon, Advocate for the Respondent No. 3

CORAM : R. M. JOSHI, J
DATE : MARCH 26, 2025

PER COURT :

1. This is second round of litigation between parties wherein the orders dated 23.08.2021 passed by the Tahsildar in Rasta Case No. 15/2020 and order dated 24.11.2021 passed by the Sub-Divisional Officer, Shrirampur in Rasta Case No. 240/2021 came to be assailed in this Petition.

2. The contesting Respondent has filed application under Section 5(2) of the Mamlatdar's Courts Act, 1906 (for short '**the Act**') and the said proceeding was registered as Rasta Case No. 15/2020. The Tahsildar conducted spot inspection and order came

to be passed on 17.07.2020 whereby application filed by the contesting Respondent came to be allowed. This order was assailed before SDO in Revision unsuccessfully. SDO has relegated the proceedings back to the Tahsildar for decision afresh. After remand, spot inspection panchnama was conducted on 13.08.2021. Tahsildar passed order on 23.08.2021 allowing the application. This order came to be challenged unsuccessfully before SDO who rejected the Revision Application No. 240/2021 by impugned order dated 24.11.2011. Hence, this Petition.

3. Learned Counsel for the Petitioners submits that right from the filing of the initial proceedings before Tahsildar, procedures required to be complied are given go by. It is his grievance that the order passed by SDO is without giving reasonable opportunity to the Petitioners to substantiate their case. According to him, the day on which the execution of the Tahsildars order was scheduled, the proceeding before the SDO was concluded. It is his submission that only in one day the proceedings were closed for judgment. It is his further submission that the Tahsildar as well as

SDO have failed to take into consideration the spot inspection panchnama which indicates existence of the alternate way for the contesting Respondent.

4. Learned Senior Counsel appearing for contesting Respondent supported the impugned order.

5. At the outset, this Court wishes to deal with the submissions made by the Counsel for the Petitioners about the Petitioners having not given opportunity of hearing by SDO. In this regard, reference can be made to the roznama recorded by the SDO which shows that on 12.12.2021 the Petitioners were present along Advocate so also Respondent also present. It further reveals that the arguments of both sides were heard. It is thereafter proceedings were closed for judgment. This proceeding is a revision. No evidence was to be led. Revisional Authority was required to consider the case sought to be made out challenging the order impugned passed by the Tahsildar. Merely because the proceeding was heard on one day and closed for judgment, the same cannot be considered as ground for setting aside the order impugned.

6. On merit if the case of the Petitioners is considered, then the same appears to be solely on the ground that there is alternate way available for the contesting Respondent and as such, it was not open for the Tahsildar to pass order under Section 5(2) of the Act. In this regard, if the spot inspection panchnama conducted on 13.08.2021 is perused, the same indicates that there is way available from the land of the contesting Respondent. However, the said way is not continued as the cultivation of grass being done by the Petitioner on the said portion. This gets reflected in the order passed by the Tahsildar dated 23.08.2021. Tahsildar has also taken into consideration the contention of the Petitioner about alternate way. This contention was not accepted for the reason that the way which is sought to be shown by the Petitioner in fact does not exist.

7. The contention of the Petitioner of alternate way could not have been considered by the Tahsildar in view of provision of Section 5(2) of the Act. The said provision indicates that Tahsildar was required to consider as to whether there is a customary way and

obstruction has been caused therein. Once these two conditions are satisfied, it is within jurisdiction of the Tahsildar to issue order of removal of such obstruction. Needless to say that rights of the parties are not determined by such order.

8. Having regard to the purpose for which the provision of Section 5 of the Act has been enacted and also in view of the fact that the orders impugned are in consonance with the material evidence on record, no interference is required therein. In the result, Petition stands dismissed.

(R. M. JOSHI, J.)