



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 12738 OF 2024

Sitaram Narayan Garudkar

VERSUS

The Sub Divisional Officer And Others

- Mr. A. D. Jagtap, Advocate for the Petitioner
- Mr. S. N. Kendre, AGP for the Respondent/State
- Mr. N. B. Patekar, Advocate for the Respondent Nos.3, 4 and 11 to 30

CORAM : R. M. JOSHI, J

DATE : APRIL 09, 2025

PER COURT :

1. At the outset, learned Counsel for the Petitioner, on instructions, makes statement that he does not wish to seek any relief against Respondent Nos. 5 to 10. He, therefore, seeks leave to delete their names from the array of Respondents.

2. Leave granted. Amendment be carried out forthwith.

3. By consent of both sides, Petition is heard and decided finally at the stage of admission.

4. This Petition takes exception to the orders dated 11.07.2023 passed by Tahsildar in Rasta Case No.

45/2022 under Section 5(2) of the Mamlatdar's Courts Act, 1906 (for short '**the Act**') allowing the suit filed by the contesting Respondent Nos. 3 and 3, so also confirmation thereof by Sub-Divisional Officer vide order dated 23.09.2024 in RTS Revision No. 388/2023.

5. The facts which led to the filing of this Petition can be narrated in brief as under:

Respondent Nos. 3 and 4 have filed Rasta Case No. 45/2022 before Respondent No. 2 - Tahsildar, Ahmednagar claiming customary right of way and obstruction caused by the Petitioners thereof. Tahsildar conducted spot panchnama and it was found therein that said obstruction is caused. During the pendency of the said application, Respondent Nos. 11 to 30 sought intervention therein as Plaintiffs. Tahsildar while passing impugned order, added these Respondents as Plaintiffs and passed order of direction of removal of obstruction against the Petitioners. Petitioners preferred Revision bearing No. 388/2022 before the Sub-Divisional Officer, Ahmednagar. After hearing both sides, the said authority dismissed the revision by order dated 23.09.2024. Hence, this Petition.

6. Learned Counsel for the Petitioner submits that the Tahsildar has committed error in not properly inspecting the land in question. He drew attention of the Court to the map which is annexed along with panchnama to claim that no any road exists and hence, there was no justification for Tahsildar to pass any order under Section 5 of the Act. Without prejudice to his submissions, in respect of Respondent Nos. 11 to 30 he submits that though these Respondents had filed application to implead themselves as Plaintiffs, no order was passed on such application. He drew attention of the Court to Section 18 of the Act and more particularly, second proviso, which according to him, decides the issue with regard to the maintainability of the suit in so far as these Respondents are concerned. It is his submission that without passing of any order of impleadment of these Respondents as Plaintiffs to the proceedings, impugned order came to be passed. It is contended that this issue was specifically raised before Revisional Authority which has not considered the same.

7. Learned Counsel for contesting Respondents

submit that the panchnama has been rightly drawn in presence of the panch witness, and according to him, the said panchnama clearly indicates existence of way which has been obstructed by the Petitioners. With regard to submissions about Respondent Nos. 11 to 30, he argued that this being summary proceeding, it would be too technical to accept the contention of the Petitioners that there is no formal order of adding intervenor as Plaintiffs. To support his submissions, he placed reliance on the judgment of this Court in case of *Bhagwat Buasaheb Phunde vs. Rama Srihari Ghule and Ors, 2021 (5) Bom.C.R. 1.*

8. As far as Respondent Nos. 3 and 4 are concerned, they moved proceedings before Tahsildar within a period of six months of causing of obstruction by the Petitioners to customary way. With regard to existence of way and its use is concerned, panchnama drawn by the Tahsildar sufficiently proves the said facts. This Court, therefore, does not find any perversity in the findings recorded by the Tahsildar to cause any interference therein in exercise of writ jurisdiction.

9. As far as intervenors are concerned, even if the contention of the learned Counsel for these intervenors is accepted that strict procedural rules would not apply to the proceedings under Section 5 of the Act, however, at the same time provision of Section 18 and more particularly, 2nd proviso cannot be ignored. For the sake of convenience, the said proviso is reproduced as under:

"Provided also that in respect of any person so added, not being a transferee pending the suit, the suit shall for the purposes of Section 5, sub-section (3), be deemed to have been instituted on the day when his name was so added."

10. Second proviso to this provision clearly shows that in case of any addition of the party to the suit except pendente lite transferee, the suit shall for the purpose of Section 5 of sub-section 3 be deemed to have been instituted on the day when his name was so added. It is thus clear that the date of adding the name of person would be material and not the date of application. If he is not added as Plaintiff, it cannot be said that the suit is filed within limitation. Section 18 needs to be read conjointly with Section 5

which mandates the filing of proceedings within a period of six months from the accrual of cause of action. In absence of any order being passed by the Tahsildar to add them as Plaintiffs, the basic issue of maintainability of the suit on their behalf cannot be addressed. This Court, therefore, finds substance in the contention of learned Counsel for the Petitioner that the order passed by Tahsildar in respect of these intervenors without passing any order of joining them as Plaintiffs, deserves interference.

11. In view of the proviso, as indicated above, the date of the filing of the suit shall be the date on which their name is added. Thus, there is no propriety in relegating back the matter to the Tahsildar for passing any appropriate order on such application. As a result of this, Petition stands partly allowed. Impugned order is maintained to the extent of Respondent Nos. 3 and 4 and set aside in respect of other Respondents.

(R. M. JOSHI, J.)