



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 13526 OF 2017

Muktabai Ananda Patil And Others
VERSUS
The State Of Maharashtra And Others

- Mr. V. B. Patil, Advocate for the Petitioners
- Mr. N. D. Raje, AGP for the Respondent Nos. 1 and 2/State
- Mr. T. K. Sant, Advocate for the Respondent Nos. 3 to 5

CORAM : R. M. JOSHI, J
DATE : FEBRUARY 24, 2025

PER COURT :

1. This Petition takes exception to the order dated 29.09.2017 passed by the Sub-Divisional Officer, Erandol, Dist. Jalgaon in RTS Revision No. 37/2017, whereby the order passed by the Tahsildar in proceeding under Section 5 of the Mamlatdar's Court Act, 1906 (for short '**the Act**') came to be reversed.

2. The facts, as they appear from the record, indicate that the Petitioner filed Wahivaat Case No. 06/2016 before Tahsildar, Erandol with specific contention that he has customary access to go to agricultural land through the land belonging to the

Respondents. It is specifically claimed that Respondents have obstructed the said customary way available for the Petitioners. As such, application was filed for removal of obstruction under Section 5 of the Mamlatdar's Court Act, 1906.

3. Notice was issued by the Tahsildar to the Respondents, however, Respondents failed to appear. Petitioners substantiated their contention by relying upon the affidavit of the Vimlabai Patil. Apart from this, Petitioners placed reliance on the sale deed of Petitioners and Respondents indicating the existence of the customary way. Tahsildar by order dated 28.05.2017 allowed the application and directed removal of obstruction. Against this order, Revision Application came to be filed under Section 23(2) of the Act before SDO. This Authority by passing impugned order reversed the findings of fact recorded by the Tahsildar and dismissed the proceeding filed before him. While doing so, it is observed that from the panchnama carried out it is not seen that there exist any way as claimed by the Petitioners. Similarly, he has refused to take into consideration the sale deeds of the parties in respect

of their respective lands by observing that the actual use of the said way is not clear from the said recitals.

4. Learned Counsel for the Petitioners submit that the SDO has exceeded its jurisdiction while entertaining the Revision Application. According to him, in exercise of revisional power it was not open for the said Authority to treat the proceeding as Appeal since the Appeal is barred by Section 23 against the order passed by the Tahsildar. To support his submissions, he placed reliance on the judgment of this Court in case of Anjali Vitthal Ingole vs. Sub-Divisional Officer and Another, 2015 (6) All.M.R. 694.

He drew attention of the Court to the sale deeds of Petitioners as well as Respondents in order to contend that there is more than sufficient evidence to indicate existence of customary way for the Petitioners to go to his agricultural land through the land belonging to the Respondents.

5. Learned Counsel for contesting Respondent and learned AGP opposed the Petition and supported the impugned order. Learned Counsel for contesting

Respondent drew attention of the Court to the panchnama drawn in the proceedings before the Tahsildar which indicates that no way exists. It is his submission that in view of the said panchnama no fault can be found with the order of SDO. Apart from this, he places reliance on the order passed by the Tahsildar in Vahivaat Case No. 06/2022.

6. There cannot be any dispute about the fact that no Appeal is provided under the Act against the order passed by the Tahsildar. Section 23(2) of the Act provides for revisional power to the Collector who may delegate the powers to subordinate to him. The SDO in exercise of the said powers has entertained the Revision Application. Question arises before this Court as to whether the SDO has exceeded its jurisdiction and has conducted the proceeding as an Appeal.

7. Perusal of the impugned order shows that SDO has practically treated the said proceedings as Appeal, which is wholly impermissible in view of specific embargo created by Section 23 of the Act. It was no open for the Revisional Authority to re-appreciate the evidence and Revisional Authority was only require to

see as to whether there is non exercise of jurisdiction or excess exercise of jurisdiction by the Tahsildar. In any case, if the order of the Tahsildar has led to the miscarriage of justice, it could have been open for the said Authority to cause interference therein. Suffice it to say that the exercise of powers as the Appellate Authority while entertaining the Revision is impermissible.

8. Apart from this, perusal of the material evidence on record indicates that sale deeds of both Petitioners and Respondents indicate existence of the way as claimed by the Petitioners. Thus, there is no justification for the SDO to say that on the basis of these recitals it cannot be said that the said way was used. In so far as panchnama dated 07.10.2016 is concerned, obviously when there is obstruction created by the Respondents by bringing the land under cultivation, which was used as a way, the way could not have been seen at the spot. That however would not lead to conclusion that no way exist therein. Hence, this Court finds no substance in the contention of the learned Counsel for Respondents that the impugned order

is sustainable in view of the said panchnama. On the other hand, the Tahsildar has rightly taken into consideration the material places before him including affidavit which has gone uncontested and the sale deeds of respective parties.

9. As a result of above discussion, this Court finds merit in the Petition. Hence, Petition stands allowed. Impugned order dated 29.09.2017 passed by the SDO in R.T.S. Revision No. 37/2017 is quashed and set aside. Order passed by the Tahsildar stands restored.

(R. M. JOSHI, J.)