



(1)

22-WP-13952-2023

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

22 WRIT PETITION NO. 13952 OF 2023

Bhausahab Kachru Dube And Another
VERSUS
Gokul Gorakhnath Bhagwat And Others

...

Mr. Vishweshwar Haribhau Pathade, Advocate for the Petitioners.
Mr. K. N. Lokhande, AGP for Respondent-State.
Mr. U. S. Patil, Advocate for Respondent No.1.

CORAM : KISHORE C. SANT, J.

DATE : 17th MARCH 2025

PC :-

1. Heard the learned Advocate for the petitioner, learned Advocate for Respondent No.1 and learned AGP for Respondent No. 2 to 5.
2. A challenge in this petition is to an order dated 13th October 2023 passed by the learned Sub-Divisional Officer, Vaijapur partly allowing the revision application filed by the present petitioners and setting aside the order dated 21st February 2023 passed by the learned Tahsildar, Gangapur in Rasta Case No.2022/Jama-1/Rasta/Kavi-116 and quashed and set aside the order dated 8th February 2023. In the same order in

clause (2), the learned Sub-Divisional Officer has also passed an order dismissing the revision on the ground of limitation. The respondent No.1 had approached the Tahsildar by filing an application under Section 5 of the Mamlatdar's Courts Act. It is his case that, there is an access available from land Gut No.58 of Village Chinchkheda Tq. Gangapur Dist. Aurangabad to go to his land in the same gut number from southern side. The said road is obstructed by the present petitioner. The learned Tahsildar by order dated 8th February 2023 allowed the application of the respondent No.1 directing the petitioner to allow him to go southern side of gut No.58. However, later on the same authority against passed an order dated 21st February 2023 allowing the application by clause (2) of the subsequent order and allowed the respondent No.1 to use the land from Gut No.57 and 58. The said order was challenged before the learned Sub-Divisional Officer by the present petitioners.

3. The learned Sub-Divisional Officer has passed unusual order as observed above. On one hand, an order is passed allowing the application partly. On the other hand, the learned SDO rejected the said

application on the ground of limitation. By third clause, the learned SDO quashed and set aside the subsequent order dated 21st February 2023 stating that it is ambiguous order and confirmed the order dated 8th February 2023.

4. Learned Advocate for the petitioner submits that he has no objection to confirm the order dated 21st February 2023 which grants rights of road from gut No.57 and 58 in accepting the case of the petitioner is that the owner of the land Gut No.57 is not party to the proceeding.

5. On going though all aspects, this court finds that the Tahsildar had no reason to pass two orders disposing of the proceedings. Once the order dated 8th February 2023 is passed, it is not clear as to what made the Tahsildar to pass another order dated 21st February 2023. The said course is not available under law. It is not clear as to why the case was reopened and pass such subsequent order. It is equally unusual for the SDO to pass contradictory orders in the same judgments.

6. Be as it is, this Court finds that it would be in the interest of justice to remand the proceeding by restoring File

No.2022/Jama-1/Rasta/Kavi-116 before Tahsildar, Gangapur for fresh decision on merits. The Tahsildar to decide the case within six weeks from today.

7. Till the matter is decided the petitioner shall allow the respondent No.1 to use the way from Gut No.58 as path way.

8. Parties to appear before the Tahsildar on 25th March 2025 without requiring any notice from the Tahsildar. It is informed that parties and Naib Tahsildar are present before this Court.

9. The proceeding be decided before 21st April 2025.

10. Interim relief granted earlier to continue till the next date.

11. Parties to act upon authenticated copy of this order.

[KISHORE C. SANT, J.]