



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1573 OF 2024

Vivek Sheshrao Patil And Others
VERSUS
Anil Bhimrao Hasbe And Others

- Mr. D. M. Mane h/f Mr. M. M. Patil, Advocate for the Petitioners
- Mr. G. D. Kale, Advocate for Respondent Nos. 1, 2, 5 and 9
- Mr. K. P. Rathod h/f Mr. Bhushan Mahajan, Advocate for Respondent Nos. 10 to 13
- Mrs. M. N. Ghanekar, AGP for the Respondent Nos. 14 and 15/State

CORAM : R. M. JOSHI, J
RESERVED ON : FEBRUARY 24, 2025
PRONOUNCED ON: MARCH 12, 2025

ORDER :

1. This Petition takes exception to the order dated 02.03.2023 passed by Tahsilder, Shirur Anantpal under Section 5 of the Mamlatdar's Courts Act, 1906 (for short '**the Act**') and confirmation thereof by Sub-Divisional Officer, Nilanga (for short '**SDO**') by order dated 28.11.2023.

2. The facts, as they appear from the record, can be narrated in brief as under:

Petitioners are the owners of land Gut No.

116. Petitioners' father sold 2H 83R land to Yashodabai Gaud i.e., the predecessor of Respondent Nos. 5 to 8. It is the case of the Petitioners that in the said sale deed there is recital about making the way available in case of emergency and it was permissive use granted by the vendor. The said access was provided from the eastern side of the land Gut No. 118 and local name of the said gut is Jambhali. In different proceeding, said sale deed came to be challenged by Petitioners for being not binding on them for want of legal necessity. Petitioners were allotted eastern side portion of land Gut Nos. 116 and 118. Petitioners claim to be not party to the sale deed in favour of Respondent Nos. 5 to 8. Another sale deed came to be executed by father of Petitioners to Respondent – Dindayal Gaud with similar recitals in the said sale deed dated 02.01.1999. Petitioners claim to be not signatory to this sale deed too. There is further sale deed executed by father of the Petitioners dated 24.08.2016 in favour of Respondent – Anil Hasbe wherein there is a mention of approach road from the eastern side of Gut No. 117. Petitioners however claim that the said recital was never acted upon.

3. By claiming customary right and also referring to these sale deeds, application was filed under Section 5 of the Act before Tahsildar alleging that the Petitioners are causing obstruction to the way for approaching their agricultural lands. This application was opposed by Petitioners denying existence of said way. The said application came to be decided on 24.08.2016 directing 10 ft wide cart road from the agricultural land of Petitioners. Similarly permission was granted to use the stream by preparing a way putting pipe on the stream on their own cost. In this Petition, Petitioners are aggrieved by the grant of way from Survey Nos. 77/117 and 76/116 and further directions are not subjected to challenge.

4. Learned Counsel for the Petitioners submits that Tahsildar as well as SDO have committed error in not considering the sale deed dated 02.01.1999 which only gives permissive use of the way from the field of the Petitioners. It is his submission that this recital in the sale deed are more than sufficient to indicate that the way in question is not a customary way. It is his submission that once it is claimed by the

Respondents about the way inter se between them is obstructed by deepening of the stream, no grievance can be made in this regard against the Petitioners. It is his submission that the Authorities below have exceeded the jurisdiction under Section 5 of the Act. He drew attention of the Court to the map which according to him indicates that the Respondents have separate way/access to their respective agricultural land.

5. Learned Counsel for Respondents, on the other hand, has drawn attention of the Court to the findings recorded by the Tahsildar indicating that the land in question belonged to the predecessor of the Petitioners who had sold the same to the Respondents. According to him, sale deed in respect of one of the Respondents clearly indicates existence of customary way. It is his submission that once customary way is established and obstruction is seen thereto at the instance of Petitioners, the Authorities could be said to have acted within the parameters and scope of Section 5 of the Act. He has also drawn attention of the Court to the google map of the subject properties so also photographs to support the impugned orders.

6. There cannot be any dispute with regard to the scope of Section 5 of the Act. This is a provision which enables Tahsildar to direct removal of obstruction caused to the customary way available for a person to approach his agricultural land. Herein this case, though sale deed in respect of one of the Respondents indicates that it was a permissive way granted to the Respondents, however, sale deed in favour of other Respondents indicates existence of the way which goes through the land of the Petitioners. This needs to be considered in the backdrop of the fact that the Petitioners' predecessor was owners of the entire land and the portion thereof were sold to the Respondents from time to time. Thus, there is evidence in order to indicate that there exists customary way through the land of the Petitioners for approaching to the agricultural land of the Respondents. The finding of fact recorded by the Tahsildar, therefore, are consistent with the material evidence on record.

7. Apart from this, perusal of the google map produced on record by the Respondents indicates that from Gut No. 116 there is a way which is abutting to

the water stream. A grievance was made by occupier of Gut No. 80/120/A about the access between his land the Gut No. 116. This has nothing to do with the Petitioners and hence, Petitioners have not challenged the said portion of the order passed by Tahsildar. In so far as Petitioners and Respondents are concerned, the way abutting to the water stream goes from Gut No. 116 to the land of the Petitioners. This way approaches to the land of the Petitioners till the river and thereafter there is a diversion for going towards Dagadwadi road, as indicated in the google map. There is a obstruction to this diversion by the Petitioners.

8. As observed earlier, sale deed of one of the Respondents indicate existence of the said way and there is reason to believe that the same has been used by other land owners who had purchased the land from the predecessor of the Petitioners. Having regard to the topography, as it appears from the google map, there is no other way available for the Respondents to approach their respective agricultural lands. Thus, the findings recorded by the Tahsildar and confirmed by the SDO with regard to the said customary way being

available, cannot be faulted with. Direction to remove obstruction in such customary way is within the jurisdiction of Tahsildar and in the instant case, the said jurisdiction is rightly exercised by the said Authority.

9. For want of any perversity in the said findings, this Court finds no reason to cause interference in the impugned orders. In the result, Petition stands dismissed.

(R. M. JOSHI, J.)