



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 7530 OF 2023

(Dwarka Ramdhan Rathod & Ors. Vs. The Sub-Divisional Officer, Darwha & Ors.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Mr. Sahil Mate i/b Mr. A.A. Zade, Counsel for the petitioners.
Ms Mrunal Naik, A.G.P for respondent nos. 1 and 2/State.

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CORAM : ANIL L. PANSARE, J.
JANUARY 21, 2025

Heard.

2] The proceedings filed by the petitioners under Section 5 of the Mamlatdar's Courts Act, 1906, resulted in order in favour of the petitioners and, thus, respondent no.3 was directed to remove the impediment and permit the petitioners to use the way, which runs from the land belonging to respondent no.3 to approach their field. The impediment was excavation in the road so much so that it resulted into creating a drain.

3] Having heard both sides, it appears that the petitioners examined themselves to prove their case. Despite giving opportunity for almost six months, respondent no.3 failed to cross-examine the witness and, thus, the proceedings were closed. In addition to evidence of petitioners, respondent no.2 – Tahsildar relied upon panchanama drawn by the Talathi concerned. The panchanama indicates that the statement of the neighboring field owners were recorded, who have supported the petitioners' theory that since time

immemorial, the road was being used. One of the neighbors, however, stated that though the way was existing, he did not use it for last 4-5 years for want of the bullocks. Thus, inability to use the road was means to use the same, that too, is a statement of one of the neighbors. The fact, however, remains that the statement of other neighbors' and the petitioners evidence was sufficient to establish their case as regards availability of road and impediment caused by respondent no.3. It is worth mentioning here that panchanama was drawn by the Talathi in presence of respondent no.3. No objection was raised against panchanama. Considering this overwhelming evidence, the Tahsildar had allowed the suit filed by the petitioners.

4] Respondent no.1, however, has upset the finding on the ground that the petitioners were bound to depose in favour of their case and that they ought to have examined the neighbors.

5] This finding is rendered ignoring the vital fact that respondent no.3 failed to cross-examine the petitioners, and secondly, there is no requirement in law that neighbors should be always examined to prove one's case. The respondent no.1 then proceeded on hypothetical grounds that, had there been the way, there would have been some traces of existence of the way.

6] This finding goes contrary to the evidence led by the petitioners so also the panchanama recorded by the Tahsildar depicting the status of the way that was available to the petitioners.

7] Respondent no.1 has then taken aid of statement of one of the neighbor, which is noted above that he has not used the said way for 4-5 years. This statement is relied upon to infer that since way that was allegedly existing has been not used for last 4-5 years, it doesn't exist. This finding ignores the statement of other neighboring field owners, who have supported the petitioners' case as also the petitioners own evidence, which remained uncontroverted.

8] The learned A.G.P though made an attempt to justify the order, she failed to show the Tahsildar's approach in relying upon the evidence of the petitioners and the Talathi's report, was perverse.

9] Put all together, respondent no.1 had upset the well reasoned finding by ignoring the evidence as also the report of Talathi. The finding, therefore, is unsustainable.

10] The petition is accordingly allowed. Order dated 29/11/2022 passed by the Sub-Divisional Officer, Darwaha, is quashed and set aside. Order dated 11/4/2022 passed by the Naib Tahsildar, Ner, is restored.

11] The petition is disposed of in above terms. No costs.

(ANIL L. PANSARE, J.)

Sumit