

(2024) 04 BOM CK 0061
In the Bombay High Court
Case No : Writ Petition No.4884 Of 2022

Nazir Alibhai Shaikh

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 22-04-2024

Acts Referred:

Citation : (2024) 04 BOM CK 0061

Hon'ble Judges : Shailesh P. Brahme, J

Bench : Single Bench

Advocate : Shaikh Mazhar A. Jahagirdar, N. R. Dayma, R. R. Karpe

Final Decision : Allowed

Judgement

Shailesh P. Brahme, J

. 1. Rule. Rule is made returnable forthwith. With the consent of parties taken up for final hearing at the admission stage.

2. The petitioner takes exception to judgment and order dated 03.03.2022 passed by the Sub Divisional Officer, Shrirampur confirming judgment and order dated 26.02.2021 passed by the Mamlatdar in Case No. 22 of 2017. Petitioner is original non applicant, whereas the respondent No. 4 is original applicant in the proceedings U/Sec. 5 of the Mamlatdars Court Act (for the sake of brevity and convenience hereinafter referred as to the 'said Act').

3. Petitioner and the respondent No. 4 are related interese and they are occupants of land gut No. 661 situated at village Guha, Tq. Rahuri, Dist. Ahmednagar. The respondent No. 4 approached the Mamlatdar by filing application in Case No. 22 of 2017 alleging obstruction caused by the petitioner in the East-West approach way situated on the Northern boundary of land gut No. 661. He prayed for injunction.

4. Petitioner contested the claim contending that there is no approach way as claimed by the respondent No. 4. On the contrary, the respondent No. 4 has a

approach way on the Southern side of land gut No. 661 in between gut No. 661 and 767.

5. A spot inspection was conducted and panchanama was drawn on 21.03.2018. Thereafter Mamlatdar rendered a judgment on 05.06.2018 granting injunction in favour of the respondent No. 4. Being aggrieved, petitioner preferred revision before the Sub Divisional Officer. It was allowed partly by order dated 25.01.2019, remanding matter to the Tahsildar to reconsider the matter.

6. After remand, again spot inspection was conducted on 30.09.2020, a panchanama was prepared along with map. The respondent No. 3/Tahsildar, Rahuri again granted injunction against the petitioner by order dated 26.02.2021. The respondent No. 2/Sub Divisional Officer confirmed the same vide order dated 03.03.2022. Being aggrieved, petitioner is before this Court.

7. Learned counsel for the petitioner submits that both the Courts committed perversity because no road existed as claimed by the respondent No. 4. He would submit that both the Courts below overlooked that there is alternate way to the respondent No. 4. He would further submit that spot panchanama was conducted in the absence of the petitioner and it was not signed by the witnesses. It should have been discarded. He would further submit that both revenue authorities have passed unreasoned orders. He therefore seeks indulgence of this Court.

8. Learned counsel Mr. Rahul R. Karpe for the respondent No. 4 opposes the submissions of petitioner on the basis of affidavit in reply. He would submit that there is concurrent finding of facts recorded against the petitioner. The conclusion drawn by the authorities is possible and based on material on record. He would submit that in earlier round of litigation also spot panchanama disclosed existence of approach way. Subsequent panchanama confirms this position. Learned counsel would submit that the proceedings before the Mamlatdar are summary in nature. As the approach road is customary, it would not be necessary to be disclosed in any revenue map. He would further submit that revisional Court has confirmed reasons given by the Trial authority. Lastly, he submits that there is no perversity or illegality in the impugned orders.

9. Learned Assistant Government Pleader who appears for respondent Nos. 1 to 3 adopts the submissions of the learned counsel for the respondent No. 4.

10. I have considered rival submissions of the litigating sides. It was incumbent upon the respondent No. 3/Tahsildar to determine as to whether there exists a approach road as claimed by the respondent No. 4 and as to whether there was any obstruction to it. Spot panchanama conducted on 21.03.2018 in earlier round of litigation did not specifically refer to existence of road in land gut No. 661. It cursorily referred to signs of the road. The location was ambiguous. After remand panchanama was conducted on 30.09.2020. It also does not make mention of approach road in clear terms. It records that a grass was found at the beginning of road claimed by the respondent No. 4.

11. Learned Tahsildar in his order dated 26.02.2021 has not independently applied mind and recorded a clear cut finding regarding existence of the road. Under the caption of conclusions the contents of panchanama conducted on 30.09.2020 have been reproduced. No finding is recorded that approach road of the respondent No. 4 has been either encroached or obstructed. The plea raised by the petitioner that there is alternate way in between land gut No. 661 and gut No. 767 has not been dealt with. There is village map on record depicting the location of the gut Nos. 661, 662, 761, 767 and the alternate way pleaded by the petitioner. There is no reference to the said map in the judgment. I am of the considered view that the Tahsildar has committed error of jurisdiction for not considering relevant material on record.

12. After remand, notice was issued to the petitioner to remain present for spot inspection, which was received by him on 28.02.2020. The petitioner submitted application to the Tahsildar that he was hospitalized from 21.09.2020. He was indoor patient of Civil Hospital from 23.09.2020 to 01.10.2020, suffering from Covid 19. He was unable to remain present for spot inspection on 30.09.2024. There is endorsement on panchanama that panchas refused to sign it. This aspect should have been taken into consideration by the Tahsildar. Panchanama drawn on 30.09.2020 is not reliable.

13. I have gone through the judgment dated 03.03.2022 passed by the respondent No. 2/revisonal authority. Though previous history of the matter is recorded in paragraph Nos. 2 and 3, no independent reasons are assigned. Submissions of the petitioner have not been dealt with. This amounts to non application of mind. Both the impugned judgments and orders are unsustainable and perverse.

14. Though there are concurrent findings of facts, I find that both the authorities have failed to exercise the jurisdiction vested in them and there is non application of mind. Therefore, the submissions of the petitioner for the respondent No. 4 cannot be accepted. Though the proceedings are summery in nature, the Trial authority is bound to record findings considering material on record. In the present matter there are no independent findings recorded by both the authorities below.

14. For the reasons recorded above, this Court finds that case is made out by the petitioner to cause interference in the impugned judgments and orders. I therefore pass following order.

ORDER

A. The writ petition is allowed.

B. Rule is made absolute in terms of prayer clause "B".

C. There shall be no order as to costs.