

(2011) 06 BOM CK 0019
In the Bombay High Court
Case No : Writ Petition No. 543 of 2011

Vijay Jagannath Pophale

APPELLANT

Vs

Narayan Kashinath Saraf, Bhanudas Kashinath Saraf and
Ramdas Kashinath Saraf

RESPONDENT

Date of Decision : 23-06-2011

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Maharashtra Land Revenue Code, 1966 — Section 143

Citation : (2011) 5 BomCR 721

Hon'ble Judges : R.M. Savant, J

Bench : Single Bench

Advocate : P.S. Kshirsagar, for the Appellant; A.J. Pathak, for the Respondent

Judgement

R.M. Savant, J.—Rule, with the consent of the parties, made returnable forthwith and heard.

2. The above petition filed under Articles 226 and 227 of the Constitution of India takes exception to the order dated 30th December, 2010, by which order the revision application filed by the Petitioner herein came to be rejected.

3. The issue involved in the above petition is as regards the Petitioner's right of a way through Gat No. 187 and 189 of village Janefal, Tq. Mehkar, Distt. Buldhana. The Petitioner is the owner of part of gat No. 188, which he claims to have purchased from one Kamlakar Badame by registered sale-deed dated 14/5/2004. Since there was no way to approach the land, the Petitioner filed application u/s 143 of the Maharashtra Land Revenue Code seeking a right of way through Gat Nos. 187 and 189. The application was initially allowed by the Tahsildar by his order dated 22/5/2008. The right of way granted to the Petitioner was through Janefal - Savatra Pandhan, which is very adjacent to the field of the Respondents and near to Gat No. 188.

4. Aggrieved by the said order dated 22/5/2008, the Respondents herein filed an

appeal before the Sub-Divisional Officer, which came to be allowed by the order dated 21/10/2008. In view of the confirmation of the order passed by the Sub-Divisional Officer, the Respondents filed a revision before the Additional Collector, Buldhana, which appeal came to be allowed by the order dated 23/12/2009. Consequently, the right of way which was granted by the Tahsildar to the Petitioner was set aside. The ground for setting aside the order of Tahsildar was - that the brother of the Petitioner, who was also a part occupant of Gat No. 188, was granted right of a way in the proceedings which he had adopted under the Mamlatdars" Courts Act, 1906.

5. Aggrieved by the said order dated 23/12/2009 passed by the Additional Collector, the Petitioner herein filed a further revision before the Additional Commissioner, which has been dismissed by the impugned order dated 30/12/2010 and the order passed by the Collector has been resultantly confirmed.

6. The order passed by the Additional Collector in appeal as well as the order passed by the Additional Commissioner ex facie discloses that what has weighed with the authorities is that the brother of the Petitioner, who is part occupant of said Gat No. 188, has already been given a right of way. However, it is required to be noted that the said right of way granted in the proceedings under the Mamlatdars" Courts Act which has admittedly been set aside in revision and therefore, the said fact could not have weighed with both the authorities. It was incumbent on the part of the authorities, therefore, to consider that the Petitioner has a right of way or whether there are any other alternate ways which the Petitioner can use. In that view of the matter, the impugned orders dated 30/12/2010 passed by the Additional Commissioner as also the order dated 23/12/2009 passed by the Additional Collector are required to be set aside and accordingly set aside and the appeal filed by the Respondents herein before the Additional Collector is remanded back to the said authority for a de novo consideration. Whilst deciding the said appeal on remand, the Additional Collector would be well advised to take into consideration the fact that the order passed by the Tahsildar under Mamlatdars" Courts Act in favour of the brother of the Petitioner have already been set aside and also to take into consideration the fact that the Petitioner has any other alternate way to his field. On remand, the said appeal/proceedings to be decided within a period of three months from the first appearance of the parties before the Additional Collector.

The parties to appear before the Additional Collector on 18/7/2011. The Additional Collector thereafter to fix the schedule as per his convenience and dispose of the proceedings within the time stipulated by this Court.

Rule is accordingly made absolute with parties to bear their respective costs.