

IN THE HIGH COURT OF JUDICATURE OF BOMBAY,
BENCH AT AURANGABAD

WRIT PETITION NO. 10118 OF 2014

Bhanudas S/o Punjaba Tupe ... Petitioner

Versus

The State of Maharashtra
& others ... Respondents

.....
Mr. A.R. Devkate, Advocate for petitioner
Mr. K.M. Suryawanshi, Advocate for respondent Nos. 1 to 3
Mr. P.F. Patni, Advocate for respondent No. 4

.....
WITH

WRIT PETITION NO. 10117 OF 2014

Bhanudas S/o Punjaba Tupe ... Petitioner

Versus

The State of Maharashtra
& others ... Respondents

.....
Mr. A.R. Devkate, Advocate for petitioner
Mr. K.M. Suryawanshi, Advocate for respondent Nos. 1 & 2
Mr. P.F. Patni, Advocate for respondent No. 3

.....

CORAM : RAVINDRA V. GHUGE

DATED : 12th JANUARY , 2015

PER COURT :

1. Leave to correct date in the prayer clauses B, C and D to read as 31-03-2010 instead of 31-03-2013. Correction be carried out forthwith.

2. I have heard the learned Advocates for the respective sides and the learned A.G.P. on behalf of respondent Nos. 1 to 3 for quite some time.

3. The contentions of the petitioner can be summarized as follows :-

a] An application dated 25-01-2010 was preferred by the respondent No. 4 along with 31 other agriculturists to the Tahsildar, Kannad, Tq. Kannad, Dist. Aurangabad, requesting for clearing the obstruction created by the petitioner herein, so as to be used by the villagers.

b] The Circle Inspector by his communication dated 13-03-2010 directed the Tahsildar, to clear the way at his level and ensure that the way which was earlier used by the villagers should be opened.

c] The communication of the Circle Inspector is based on Panchanama dated 13-03-2010.

d] By order dated 31-03-2010, the Tahsildar, Kannad has informed the Circle Inspector that the obstructions created have been removed and the path has been cleared for being used by the villagers.

e] The petitioner preferred R.C.S. No. 65 of 2010 before the Civil Court.

f] A revision No. 3 of 2010 was preferred by the petitioner before the Collector, Aurangabad under Section 23 of the Mamlatdar Courts Act, 1906.

g] Revision No. 3 of 2010 was rejected by judgment dated 23-09-2011.

h] On 04-08-2012, the Civil Court has dismissed R.C.S. No. 65 of 2010 in default.

i] An application dated 02-05-2011 was filed by respondent No. 4 and another application dated 02-05-2011 was filed by the petitioner before the Tahsildar/ Mamlatdar Court at Kannad bearing Cr.No. 150.

j] By order dated 28-08-2011, the application filed by respondent No. 4 was allowed and the application filed by the petitioner was rejected.

k] The petitioner preferred R.C.S. No. 320 of 2012 for perpetual injunction and declaration under Section 34 & 38 of the Specific Relief Act.

l] By its judgment dated 31-08-2012, R.C.S. No. 320 of 2012 has been dismissed.

m] The petitioner has preferred this Writ Petition on 28-11-2014 praying for setting aside of the order passed by respondent No. 1 on 22-03-2011 and the order passed by respondent No. 2 on 31-03-2013.

n] The petitioner has relied upon the following judgments of this Court :-

(A) Judgment dated 18-03-2012 in Writ Petition No. 10346 of 2012 in the matter of **Bhagwat Namdeo Nirmal & Anr. Vs. The Sub Divisional Officer, Shrirampur, Dist. Ahmednagar.**

(B) Judgment dated 17-04-2013 passed by this Court in Writ Petition No. 6509 of 2012 in the matter of **Rajaram Ajaysing Rajput & Ors. Vs. Dada Ramsing Rajput & Ors.**

(C) Judgment of this Court dated 08-08-2013 passed in Writ Petition No. 575 of 2013 in the matter of **Jyotiram s/o Dagdu Satpute & Anr. Vs. The State of Maharashtra & others.**

4. By placing reliance on the above said judgments, the petitioner contends that the scheme under the Mamlatdar Courts Act requires the presentation of an application which is treated as an application under Section 5(2) of the said Act. It is not stated that application 25-01-2010 is such an application. The learned Advocate for the respondent indicates that there are no pleadings in the said application and, therefore, cannot be construed to be an application under Section 5(2) of the Act.

5. This Court has held that such an application must satisfy the ingredients as required under Section 7 of the Act. In the event the said application does not comply with the requirement of Section 7, then as per Section 8 of the Act, the Mamlatdar will have to explain to the person presenting the application the nature of the reliefs available to him and enquire with him as to whether

he is seeking the reliefs as are available to him under Section 7 of the Act. If the applicant prays for such relief, the said application could then be endorsed by the Mamlatdar and the same shall, therefore, be deemed to be the presentation of a plaint.

6. It would be apposite to reproduce the observations of this Court in paragraph Nos. 5, 6 and 7 of the judgment and order dated 18-03-2013 delivered in Writ Petition No. 10346 of 2012 here-in-below :-

5. With the assistance of learned counsel, I have gone through the impugned order. The scheme of Mamlatdar's Courts Act requires presentation of an application, which is treated as application under Section 5(2) of the said Act. The said application is required to satisfy the ingredients as laid down under Section 7 of the said Act. In case the application does not comply requirements of section 7, then as per Section 8 of the said Act, the Mamlatdar has to explain the person presenting the petition, the nature of reliefs afforded by the Act and shall inquire whether the applicants desire to obtain the reliefs available under the Act. If the petitioners express the desire to obtain relief, the Mamlatdar has to endorse on the petition which shall thereupon be deemed to be a plaint presented of the Act. If the plaint does not contain the particulars specified in Section 7, after the Tahasildar shall examine the person on oath and ascertain from him such of the particulars as are specified in Section 7 of the said Act which are not clearly and correctly stated in the plaint, and shall reduce the examination to writing in the form of an endorsement or annexure to the plaint which shall thereupon be deemed to be part of the plaint.

6. Perusal of the application submitted by the present respondent Nos. 3 to 5/ original applicants, it is manifest that the said application is bereft of the particulars, as are required under Section 7, the consequences of lack of cause of action and non filing of the plaint within the six

months after accrual of cause of action are far reaching, it entails in even rejection of plaint. In normal course, if the provisions of the Civil Procedure Code only an applied then the application is required to be rejected. However, Section 8 & 9 of the said Act cast an obligation / duty on the Mamlatdar to give an opportunity to the applicant to correct the defect and so also to examine the applicant on oath. In the present case, the Mamlatdar has failed in his duty to adhere to Section 8 and 9 of the said Act. The Sub Divisional Officer has not considered the said aspect, though the Mamlatdar has rejected the application on the ground of absence of cause of action.

7. In normal course, I would have allowed the Writ Petition. However, as the Mamlatdar has failed to perform his duty by not resorting to Section 8 & 9 of the said Act, I am inclined to afford one more opportunity to the respondents/ Original applicants.

7. The petitioner, therefore, contends that though there are concurrent findings against him, inasmuch as his R.C.S. No. 65 of 2010 has been dismissed in default and R.C.S. No. 320 of 2012 has been dismissed by a judgment, the fact remains that the procedure required to be followed by the Mamlatdar under the Act has not been so done. So also, R.C.S.No. 320 of 2012 was filed under a wrong advise. In fact the petitioner should have come to this Court. Much time has, therefore, been lost.

8. The learned A.G.P. Shri Suryawanshi appearing on behalf of respondent Nos. 1, 2 and 3 has strenuously submitted that the petitioner has developed a habit of creating obstacles and obstruction in the path at issue, at regular intervals. On each

occasion, the State authorities had to ensure the removal of such obstruction. As recently as on 03-01-2015, respondent No. 3 Circle Inspector once again issued notice to the petitioner for clearing the path from Gut Nos. 6, 69, 3, 5 and 10 which has been blocked by the petitioner.

9. He, therefore, submits though the path has been utilised for several years by the said villagers, the petitioner takes the law in his hands and creates obstruction so as to tire out the villagers. No sympathy needs to be shown to the petitioner despite the fact that the concerned Tahsildar may not have followed in principle the procedure laid down under the Mamlatdar Courts Act. He submits that the provisions have been substantially followed and that is how the first order dated 13-03-2010 based on the Panchanama has been passed.

10. Shri Patni, learned Advocate appearing on behalf of respondent No. 4 while supporting the contentions of the learned A.G.P. has drawn my attention to the judgment dated 30-08-2014 delivered by the Trial Court in R.C.S.No. 320 of 2012. He points out from paragraph 13 that the brother of the petitioner has admitted in the cross-examination that he has put his signature on Panchanama dated 18-10-2011. He admits that the access road

is available from Gut No. 1 and 2 for approaching Gut No. 3 and 5 so as to reach Gut No. 69.

11. Shri Patni has further pointed out from paragraph No. 16 of the said judgment that the Trial Court has recorded the statement of the petitioner in his cross-examination that no alternate road is available to the defendant, except the road which has been cleared by the Tahsildar. It was thus admitted that the said road at issue was cleared of its obstruction by the Tahsildar.

12. Shri Patni, therefore, strenuously points out from the notice dated 03-01-2015 that despite the dismissal of the Civil suit filed by the petitioner, he has created obstructions which have been taken note of by respondent No. 3 Circle Inspector and, therefore, the said notice dated 03-01-2015 was issued to the petitioner.

13. He, therefore, submits that in the event this Court is inclined to direct the concerned Tahsildar to rehear application dated 25-01-2010 in the light of the observations of this Court in the above referred three judgments, the petitioner be directed to first remove the obstruction as is pointed out by the respondent No. 3- Circle Inspector vide its notice dated 03-01-2015. The petitioner be imposed with costs for having taken the law in his hand.

14. Having considered the submissions of the litigating parties and the submissions of the learned A.G.P., it appears that the application dated 25-01-2010 was not in proper form and the concerned authority had not dealt with the matter as was expected to be done as per the scheme of Mamlatdar Courts Act.

15. In the above referred judgments dated 18-03-2013 and 17-04-2013 (*Coram :- S.V. Gangapurwala, J.*) and the judgment dated 08-08-2013 (*Coram :- R.G. Ketkar, J.*), the Mamlatdar (Tahsildar) has to follow a specific procedure. I do not find that the Mamlatdar has strictly followed the said procedure. Nevertheless, the Panchanama dated 13-03-2010 has been drawn and which is a matter of record.

16. The respondents have pointed out that the petitioner has been taking the law in his hand. Ends of justice would be met by directing the petitioner to remove the obstruction as per the notice dated 03-01-2015 issued by the respondent No. 3-Circle Inspector as a pre-condition for enabling him to address the mind of the Mamlatdar on the application dated 25-01-2010. So also, since by this petition, the petitioner seeks to reverse the proceedings, the hard-ships and rigours of litigation suffered by the respondent No. 4 and respondent No. 3 in these two petitions respectively, can be compensated by the petitioner by depositing an amount of

Rs. 30,000/- (Rs. Thirty thousand only) before the concerned Tahasildar, Tahasil office, Kannad.

17. As such, this petition is partly allowed with the following directions :-

a] Impugned order in revision dated 22-03-2011 and the order of the Tahsildar dated 31-03-2010 are quashed and set aside.

b] The petitioner shall deposit an amount of Rs. 30,000/- (Thirty thousand) with the Tahsildar, Tahsil office, Kannad within a period of thirty days from today.

c] The petitioner shall remove such obstruction as is mentioned in the notice dated 03-01-2015 as a pre-condition for commencing the hearing of the matter before the Tahsildar.

d] Before commencing the hearing of the said proceedings, the Tahsildar shall call for a report from the Circle Inspector- respondent No. 3 as regards removal of the obstruction by the petitioner and the clearing of the path.

e] In the event the petitioner deposits the said amount as directed in this order, file No. 2010/Jama-2/Kavi, Tahsil office Kannad shall stand restored to the office of the Tahsildar. The litigating parties shall, therefore, appear before the said Tahsildar on 23-02-2014 at 11.00 am and

separate notices shall not be issued to the litigating parties by the Tahsildar.

f] If either of these two directions i.e. depositing of costs and removal of obstruction, is not complied with by the petitioner within the time period as stated in this order, both the impugned orders shall stand restored and this order shall stand recalled resulting in the dismissal of these petitions.

g] The petitioner shall not create any further obstruction on the path at issue till the decision of the Tahsildar in the case remanded for final hearing. Needless to state, Tahsildar/ Mamlatdar shall decide the proceedings strictly in accordance with law and on its own merits.

h] On depositing of the costs, respondent No. 4 and respondent No. 3 in these two petitions respectively, will be at liberty to withdraw the said amount in equal proportions without any conditions.

i] In the light of the order passed in the first petition, the second petition No. 10117 of 2014 stands disposed off as the issue is the same.

(RAVINDRA V. GHUGE, J.)