

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1857 OF 2014

Vasantrao Parashram Patil & Ors.	..	Petitioners
VS.		
Vikas Vasant Patil & Ors.	..	Respondents

Mr. Uday Warunjikar for Petitioner.
Mr. Bhushan Walimbe for Respondent Nos. 1 to 6.
Ms Aparna Vhatkar – AGP for Respondent No. 7.

CORAM : M. S. SONAK, J.
DATE : 26 FEBRUARY, 2015

P.C. :-

1] This petition is directed against the order dated 23 November 2012 made by the Sub Divisional Officer, Islampur (SDO), allowing the revision petition instituted by the respondent nos. 1 to 6 against the order dated 21 May 2012 made by the Mamlatdar, Islampur under the provisions of the Mamlatdar Courts Act, 1906 ("said Act).

2] By order dated 21 May 2012, the Mamlatdar, Islampur in exercise of powers conferred by Section 5 of the said Act had directed the respondent nos. 1 to 6 to refrain from obstructing access between properties bearing Gat Nos. 447, 473, 474 and 475 (Bhatwadi to Shene). The respondent nos. 1 to 6, instituted a revision petition before the SDO, which has since been allowed by the impugned order dated 23 November 2012.

3] The petitioners had instituted an appeal against the order dated 23 November 2012 to the Additional Commissioner. The same has been disposed of by order dated 17 April 2013, on the grounds of maintainability. The said order is not challenged in the present petition, rather the petitioners challenge the SDO's order dated 23 November 2012, on the ground that they have no other alternative or efficacious remedy available to them.

4] Mr. Warunjikar, the learned counsel for the petitioners made the following submissions in support of the petition :

(A) That the impugned order, almost entirely proceeds on the basis of some orders made in Regular Civil Suit No. 397 of 2007, to which the petitioners were not even parties. The orders impugned in the said civil suit, can certainly not be regarded as orders made in *rem* and therefore, the learned counsel contends that the same could not have been made the basis to non suit the petitioners;

(B) That the Mamlatdar, in making the order dated 21 May 2012, had made a site inspection and passed the order on the report of such site inspection. The impugned order made by the SDO, does not even advert to this aspect and therefore there is failure to take into consideration relevant and vital material;

(C) The Mamlatdar, in making the order dated 21 May 2012 had recorded a categorical finding that there was no alternate road available to the petitioners. Such finding has not been dealt with by the SDO. In any case, the treatment meted out to such finding is superficial and therefore warrants interference.

5] Mr. Walimbe, the learned counsel for the respondent nos. 1 to 6, whilst countering the submissions of Mr. Warunjikar, submitted as under:

(A) That the petitioners have suppressed several vital and relevant facts, including *inter alia* circumstance that several villagers, including some of the petitioners had instituted regular civil suit no. 335 of 2010 in the Court of Civil Judge, Senior Division, Islampur, seeking similar right of access. Further, the petitioner no. 7 is the father of the two defendants in civil suit no. 397 of 2007, to which reference has been made in the impugned order. Finally, some of the petitioners have filed intervention application in writ petition no. 7954 of 2008, which also concerns the right of access claimed before the Mamlatdar;

(B) That the impugned order has clearly recorded that alternate access is very much available to the petitioners and

that such finding is based upon the material available on record;

(C) In the year 2008, a similar plea for access had been made by some of the petitioners but the same was not entertained by the Mamlatdar on the ground of pendency of civil proceedings before the Civil Court. The position, was in no manner different in the year 2012, when the petitioners, once again approached the Mamlatdar and the Mamlatdar made the order dated 21 May 2012.

6] Having heard the learned counsels for the parties and perused the material on record, in my judgment, no case is made out warranting any interference with the impugned order. The brief reasons in support of this decision are as follows.

7] In the first place, it was the duty of the petitioners to have disclosed the true and correct facts, especially with regard to the institution of civil suit no. 335 of 2010, if not other matters. Thereafter, the petitioners could have always explained the distinguishing features, if any, and urged that the institution of such a suit was not relevant to the present proceedings. In this case however, the petitioners chose not to advert to the said proceedings in the memo of writ petition. A perusal of the plaint in the said

proceedings would indicate that at least some of the petitioners are also the plaintiffs therein. The submission that the properties involved in the said suit and the property involved in the application before the Mamlatdar Courts is not one and the same, does not inspire any confidence. In fact upon perusal it was noticed that there is overlapping to a great extent. In any case, it was the duty of the petitioners to have disclosed the circumstance that such a civil suit had indeed been instituted by at least some of them. Further, the circumstance that the said civil suit has since been dismissed for default, is also not an excuse for non disclosure.

8] Similarly, although Mr. Warunjikar is right in his submission that the orders, and that too interim orders, made in regular civil suit no. 397 of 2007, cannot be said to be orders in *rem*, nevertheless, there is no serious denial that the two defendants in the said suit are the sons of th petitioner no. 7. The said civil suit was instituted by the respondent nos. 1 to 4, because the two sons of petitioner no. 7 were allegedly interfering with the said respondents proprietary rights, by way of claiming access through the same. The civil court has granted a temporary injunction in favour of the respondent nos. 1 to 4 and against the two sons of the petitioner no. 7, with regard to the attempted user of the access, which is the subject matter of application before the Mamlatdar. The

injunction was confirmed, both by the District Courts as well as this Court. In the said orders, there is a *prima facie* finding recorded that the said two persons have an alternate access. Although such orders are not orders in *rem*, considering that the petitioner no. 7, who is the father of the two defendants against whom the said orders have been made, at least disclosure of full facts was necessary. Besides, it cannot be said that this was some irrelevant circumstance, which the SDO was duty bound to ignore. The SDO was justified, in the facts and circumstances of the present case to take into consideration the said circumstance.

9] Ultimately, it must be noted that the proceedings under the said Act are summary in nature. Notwithstanding any orders made under the said Act, it is always open to the parties to establish their substantive rights by way of civil proceedings. In fact at least some of the petitioners, by way of institution of civil suit had done precisely the same. Merely because said civil suit has been dismissed for default or that the said petitioners were not successful in obtaining any orders therein, it cannot be said that they have some sort of unqualified right to obtain orders under the said Act. There is much substance in the submission of Mr. Walimbe, that some villagers have approached the civil courts, others, the Mamlatdar in order to obtain the very same reliefs.

10] There is also substance in the contention of Mr. Walimbe that the Mamlatdar, in making the order dated 21 May 2012, ought to have taken into consideration the earlier order dated 22 July 2008, by which the Mamlatdar had declined to exercise powers, on the ground that the matters were pending before the civil courts with regard to the subject matter of the claim. This was an order made in 2008 and the position with regard to pendency of matters in civil suit had not undergone any significant change. Without adverting to this relevant circumstance, the Mamlatdar made the order dated 21 May 2012.

11] If therefore all the aforesaid circumstances are cumulatively concerned, there is no reason to fault with the impugned order made by the SDO. There is no merit in this petition, which is consequently dismissed. There shall be no order as to costs.

(M. S. SONAK, J.)