

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 161 OF 2012

Machindra D. Pawar

.. Petitioner/Applicant

vs.

Collector, Solapur and ors.

.. Respondents

Mr. S.S. Patwardhan alongwith Mr. Ruturaj Pawar for the
Petitioner/Applicant.

Mr. A.B. Metkari for Respondent Nos.1 and 2.

Mr. Vishwanath Talkute for Respondent Nos.3 to 17.

CORAM : M. S. SONAK, J.

DATE : 5 May, 2015.

P.C. :-

1] This Civil Revision Application challenge the orders dated 2 September 2011 and 22 June 2011 made by the Mamlatdar and Collector under the provisions of the Mamlatdars Courts Act 1906 (said Act) directing the applicant to refrain from creating any impediments upon the right of way claimed by the respondents.

2] The learned counsel for the applicant submitted that the impugned orders ignore the relevant materials on record, including material in form of panchanamas, which indicate that there was no road/right of way is in existence through the applicant's property and in any case that there was no impediments whatsoever created by the applicant thereon. Learned counsel for the applicant took me through the plaint and submitted that there is no statement to the effect that the cause of action had accrued within six months from the date of filing of the plaint. In this view of the matter, learned counsel for the applicant submitted that the impugned orders are

required to be interfered with by this Court in exercise of its revisional jurisdiction.

3] Having heard learned counsel for the parties and perused the record, in my judgment, there is no case made out to interfere with the concurrent findings recorded by the Mamlatdar and the Collector. One of the panchanamas, no doubt vaguely states that there was neither any road nor any impediments found at the site. The second panchanama, however, states that there were no impediments found on the road/right of way. That apart, the parties have lead oral evidence and it is upon consideration of such evidence that the impugned orders came to be made. In exercise of revisional jurisdiction, there is no question of re-appreciating the evidence on record. In the facts and circumstances of the present case, it cannot be said that the findings of fact recorded by the two authorities suffer from any perversity, so as to warrant interference in exercise of revisional jurisdiction.

4] In so far as the plaint is concerned, Section 8 of the said Act provides that even informal petitions to be treated as plaints. Significantly, in the reply filed by the applicant to the plaint, no such objection was taken that there is no precise paragraph indicating manner and date upon which cause of action accrued. Accordingly, it is not possible to entertain such objections, at this stage. If the objections were to have been raised earlier, then possibly, the Mamlatdar in exercise of powers conferred upon by Section 9 of the said Act, could have required the respondents to furnish details as to the precise date on which the cause of action allegedly accrued.

5] That apart, orders made under the Mamlatdars Courts Act, 1906 do not have any statutory finality as such. It is always permissible for the parties to approach the Civil Court and obtain appropriate relief with regard to protection of their proprietary rights.

10] Accordingly, no case is made out to interfere with the impugned orders. However, considering the circumstance that the impugned orders had been stayed by this Court since the year 2012, the interim reliefs shall continue for a further period of two months from today.

11] It is further made clear that in case, the applicant institutes a suit in the Civil Court, then the Civil Judge to decide the same, without in any manner being influenced by the orders made under the Mamlatdars Courts Act, 1906 or for that matter any observations made in the present order. Further, the Civil Court should also not being influenced by the circumstance that this Court despite dismissal of revision application, has continued the interim relief for a period of two months. All such matters may be decided by the Civil Court, if approached, on its own merits and in accordance with law. In fact, all contentions of all parties are kept open.

12] Accordingly, Civil Revision Application is dismissed. There shall be no order as to costs.

(M. S. SONAK, J.)