

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.1451 OF 2015

Keshav Arjun Patil	]	
Age 52 years, Occ : Agriculture	]	
R/o. Asoli, Tal. Kalwan, Dist. Nashik	]	]..... Petitioner.

versus

1]	Devram Mahadu Kachave	]	
	Age : Adult, Occ : Agriculture,	]	
		]	
2]	Nana Mahadu Kachave	]	
	Age : Adult, Occ : Agriculture	]	
		]	
	All r/o. Asoli, Tal. Kalwan, Dist.Satara	]	
		]	
3]	The Sub-Divisional Officer,	]	
	Kalwan Division, Kalwan, Nashik	]	]..... Respondents.

Mr. Prashant D Patil for the Petitioner.

Mr. Vinod N Tayade for the Respondent Nos.1 and 2.

Ms. M S Bane “B” Panel Counsel for the Respondent No.3.

CORAM : R. M. SAVANT, J.

DATE : 24th June 2015

ORAL JUDGMENT

1 Rule with the consent of the learned counsel for the parties made returnable forthwith and heard.

2 The writ jurisdiction of this Court is invoked against the order dated 28./11/2014 passed by the Sub-Division Officer, Sub Division Kalwan, Kalwan by which order the Revision Application filed by the Respondent Nos.1

and 2 came to be allowed and resultantly the order dated 10/4/2013 passed by the Tahsildar , Kalwan allowing the Application filed by the Petitioner under Section 5 of the Mamlatdar's Court Act came to be set aside.

3 It is not necessary to burden this order with unnecessary details. Suffice it would be to state that in view of the alleged obstruction caused by the Respondent Nos.1 and 2 on the road from Asoli Phata to Kalamthe Phata which road is used by the Petitioner herein to access his property i.e. Gat No.8, that the Application invoking Section 5 of the said Act came to be filed. It seems that pursuant to the said Application, the Tahsildar carried out the site inspection and prepared a report which is on pages 41 to 43 of the writ paper book. In the said map prepared by the Tahsildar the obstruction caused by the Respondent Nos.1 and 2 on the said road has been depicted by the dots shown on the said portion. The Tahsildar after giving an opportunity to the parties, allowed the said Application filed by the Petitioner by the order dated 10/4/2013 and directed the Respondent Nos.1 and 2 to remove the obstruction from the said road.

4 The Respondent Nos.1 and 2 aggrieved by the said order dated 10/4/2013 took exception to the same by filing Revision Application being R T S Appeal No.78 of 2013. In the said Revision Application the Respondent Nos.1 and 2 put up a case that they also do not have access to their land being

Gat No.9 and therefore they should be provided access to their said land from Gat No.8 which is the land belonging to the Petitioner. It seems that the Village Committee which takes cognizance of the disputes between the villagers which is known in vernacular as “Village Tantamukti Committee”, tried to resolve the dispute between the Petitioner and the Respondent Nos.1 and 2, however, ultimately in its report dated 25/1/2014 stated that it is not possible to resolve the dispute between the parties in view of the fact that the Petitioner is not agreeable to provide the access from his land i.e. Gat No.8 to go to Gat No.9 which is the land belonging to the Respondent Nos.1 and 2. In the said Revision Application the Petitioner sought to rely upon the letter dated 1/6/2013 addressed to the Revisionary Authority by the villagers as also an affidavit of one villager in support of his case that there is an obstruction created by the Respondent Nos.1 and 2 on the said road. The Revisionary Authority i.e. the Sub Divisional Officer considered the said Revision Application and has by the impugned order allowed the same and set aside the order dated 10/4/2013 passed by the Tahsildar. The Sub Divisional Officer has adverted to the fact that attempts were made by the Village Committee to resolve the dispute between the parties but because of the stand of the Petitioner that the dispute could not be resolved. The Sub Divisional Officer has further adverted to the fact that the order has been passed by the Tahsildar solely on the basis of the case of the Petitioner and that the adjoining land holders whose names appeared in the penultimate paragraph of the impugned

order have not been issued notice . The Revisionary Authority thereafter curiously has directed the Petitioner and the Respondent Nos.1 and 2 to make available the way to each other from their respective lands. In so far as the Respondent Nos.1 and 2 are concerned, the Sub Divisional Officer has directed that the way should be made available by the Respondent Nos. 1 and 2 along side the boundary of Gat No.13 and in so far as the Petitioner is concerned, he should make available the way from the northern side of Gat No.8 to got to Gat No.9 which is the land belonging to the Respondent Nos.1 and 2. Significantly the Sub Divisional Officer has observed that the order passed by the Tahsildar in the facts and circumstances of the case directing removal of obstruction cannot be faulted with but thereafter has issued directions as indicated herein above.

5 In my view, the Sub Divisional Officer was only concerned with the merits of the order dated 10/4/2013 passed by the Tahsildar considering that it is a proceeding under Section 5 of the Mamlatdar's Court Act and was not concerned with the grievance if any of the Respondent Nos.1 and 2 as regards the right of way. It is well settled that the proceedings under Section 5 of the said Act are summary in nature and the said provision can be invoked if there is an obstruction caused to the right of way which is in existence. Hence an inquiry in the proceeding under Section 5 of the said Act is limited to see whether there is an existing way and whether the said way has been

obstructed. The scope of the said proceedings cannot be extended to adjudicate any rival claim that is made by any other party, especially in the present case when the allegation of obstruction is made against the Respondent Nos.1 and 2. Hence in so far as the direction which is contained in the impugned order dated 28/11/2014 directing the Petitioner to give way to the Respondent Nos.1 and 2 from the northern side of land bearing Gat No.8 to go to the land bearing Gat No.9 is concerned, the said direction has been issued wholly without jurisdiction. If it is the case of the Respondent Nos.1 and 2 that they have no other access to go to their land i.e. Gat No.9 except through the Gat No.8 and they are claiming the right of way through Gat No.8, then it would be open for them to invoke the relevant provisions of the Maharashtra Revenue Code but cannot make the said claim in the proceedings under Section 5 of the Mamlatdar's Court Act. In my view, therefore the impugned order dated 28/11/2014 passed by the Sub Divisional Officer, Kalwan would have to be quashed and set aside and is accordingly quashed and set aside, and the matter would have to be relegated back to the Sub Divisional Officer Kalwan for a denovo consideration of the Revision Application. As observed herein above, the Sub Divisional Officer, Kalwan would keep himself within the parameters of the scope of an inquiry under Section 5 of the Mamlatdar's Court Act and would not enlarge the scope to consider any rival claim. On remand the parties to appear before the Sub Divisional Officer, Kalwan on 6th July 2015. The Sub Divisional Officer, Kalwan thereafter to complete the

proceedings latest by 6th September 2015. Till the said Revision Application is decided, the status quo in respect of the right of way would continue to operate. The above Writ Petition is allowed to the aforesaid extent. Rule is accordingly made absolute with parties to bear their respective costs of the Petition.

[R.M.SAVANT, J]