

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4861 OF 2015

- | | | | |
|----|--|---|--------------------|
| 1] | Shri Tukaram Aaba Jagtap |] | |
| | |] | |
| 2] | Smt. Lata Tukaram Jagtap, |] | |
| | |] | |
| 3] | Shri Ravindra Tukaram Jagtap |] | |
| | |] |] |
| | All age : Adult, Occ : Agriculture, |] | |
| | R/at : Mahur , Tal. Purandar, Dist. Pune |] | Petitioners. |

versus

- | | | | |
|----|------------------------------------|---|--------------------|
| 1] | The Sub-Divisional Officer |] | |
| | Daund-Purandar Sub-Division |] | |
| | Purandar (Saswad), Dist. Pune |] | |
| | |] | |
| 2] | The Tehsildar, Purandar at Saswad |] | |
| | |] | |
| 3] | Shri Chandrkant Bapu Jagtap |] | |
| | |] | |
| 4] | Shri Dattatraya Bapu Jagtap |] | |
| | |] | |
| 5] | Shri Rajendra Namdev Jagtap |] | |
| | |] | |
| | All Age : Adult, Occ : Agriculture |] | |
| | R/at : Mahur, Tal. Purandar |] | |
| | Dist. Pune |] | Respondents. |

WITH
WRIT PETITION ST. NO.16204 OF 2015

- | | | | |
|----|------------------------------------|---|--------------------|
| 1] | Chandrkant Bapu Jagtap |] | |
| | Age – Major, Occu – Agri |] | |
| | |] | |
| 2] | Dattatraya Bapu Jagtap |] | |
| | Age-Major, Occu – Agri |] | |
| | Both R/o Mahur, Taluka – Purander, |] | |
| | District – Pune |] | Petitioners. |

Versus

- | | | |
|----|--|---------------------|
| 1] | Tukaram Aba Jagtap |] |
| | Age – Major, Occu – Agri |] |
| | |] |
| 2] | Lata Tukaram Jagtap |] |
| | Age – Major, Occu – Agri |] |
| | |] |
| 3] | Ravindra Tukaram Jagtap |] |
| | Age – Major, Occu – Agri |] |
| | |] |
| | All R/o Mahur, Taluka – Purander |] |
| | District – Pune |] |
| | |] |
| 4] | Sub – Divisional Office, Dound Purander, |] |
| | Sub-Division Purander, District Pune |] |
| | |] |
| 5] | Mamlatdar Purander, at Saswad |] |
| | District Pune |] |
| | |] |
| 6] | State of Maharashtra |]..... Respondents. |

Mr. R. S. Kadam for the Petitioner in Writ Petition No.4861 of 2015 and for the Respondent Nos.3 and 4

Mr. P. D. Dalvi i/b Mr. R. G. Patil for the Petitioners in Writ Petition St No.16204 of 2015 and for the Respondent Nos.3 & 4 in Writ Petition No.4861 of 2015

Mrs Gauri Rao AGP for the Respondent State

CORAM : R. M. SAVANT, J.

DATE : 25th June, 2015

ORAL JUDGMENT

1 At the outset, the Learned Counsel for the Petitioner seeks deletion of the Respondent No.5 in Writ Petition No.4861 of 2015. The said Respondent is accordingly deleted at the risk of the Petitioner.

2 Rule in both the Petitions. With the consent of the Learned Counsel for the parties made returnable forthwith and heard.

3 The above Petitions are cross Petitions challenging the order dated 24-3-2015 passed by the Sub Divisional Officer, Daund-Purandar, Sub-Division Purandar (Saswad). By the said order, the Revision Application filed by the Respondent Nos.3 and 4 herein came to be allowed and resultantly the order dated 23-1-2012 passed by the Tahsildar in Rasta Case No.28 of 2012, came to be set aside.

4 It is not necessary to burden his order with unnecessary details. Suffice it would be to state that on the allegation that the Respondent Nos.3 and 4 have put up obstructions on the road coming from Gat Nos.732 to 734, appurtenant thereto on the boundary of the said Gat No.732 that the jurisdiction of the Tahsildar under Section 5 of the Mamletdars' Courts Act (for short the said Act), came to be invoked. The allegation as can be seen in the instant application is against the Respondent Nos.3 and 4 herein and it appears that there is certain acrimony prevailing between the Petitioners and the said Respondents arising out of the use of the said road. It appears that the Tahsildar pursuant to the application filed by the Petitioners directed the Circle Officer, Parinche to carry out the site inspection and submit a report. The Circle officer it seems has accordingly submitted a report and the order discloses that

the report is to the effect that there is an obstruction on the said road. It appears that the Petitioners in the said proceedings under Section 5 of the said Act also relied upon certain supporting material in the form of the statements of the villagers. The Tahsildar Saswad-Purandar by his order dated 23-1-2012 allowed the said application filed by the Petitioners and directed the Respondent Nos.3 and 4 to remove obstructions and make the road available for use. The Tahsildar whilst recorded a finding of fact as regards the obstruction has relied upon the material which is on record.

5 The Respondent Nos.3 and 4 aggrieved by the order passed by the Tahsildar dated 23-1-2012 took exception to the same by filing a Revision Application which was numbered as Revision Application No.104 of 2013. In so far as the Revisionary Authority is concerned i.e. Sub Divisional Officer (SDO), the SDO in terms has recorded a finding that the decision of the Tahsildar is appropriate. However, after so recording the finding, the SDO on the ground that the owners of various Hissas of Gat No,732 were not joined as parties to the proceedings held that the proceedings suffer from the defect of non joinder of necessary parties and accordingly allowed the Revision Application and set aside the order on the said ground. It is the said order passed by the Revisionary Authority that the Petitioner in Writ Petition No.4861 of 2015 has filed the said Writ Petition.

6 In so far as the Writ Petition St. No.16204 of 2015 is concerned, the same is filed by the Respondent Nos.3 and 4 to the said Writ Petition Nos.4861 of 2015, challenging the findings recorded by the Revisionary Authority in the impugned order based on the report of the Circle Officer.

7 Heard the Learned Counsel for the parties. In so far as the Learned Counsel for the Petitioner Mr. Kadam is concerned, he initially sought to question the authority of the SDO to try the Revisionary proceedings. In support of the said contention, he had sought to place reliance on a judgment of a Learned Single Judge of this Court in the matter of **Bija s/o Maroti Hatwar Vs. Kisan s/o Chirkut Padole & Anr.**¹ The said submission was vehemently opposed on behalf of the Respondent Nos.3 and 4 i.e. the Petitioner in the companion Petition by placing reliance on the relevant provisions of the Maharashtra Land Revenue Code as also the order dated 1-8-1996 issued by the then Collector, Pune delegating the powers under the Mamletdars' Courts Act to the SDO. The Learned Counsel for the Petitioners Mr. Kadam thereafter fairly conceded that he would not press the issue of competency of the SDO to try the proceedings. Hence there is now no dispute as regards the competency of the SDO to try the proceedings.

8 As indicated above, the present proceedings are under Section 5 of the said Act. The said provision as is well settled can be invoked when there is

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obstruction of the nature caused which is covered by the provisions of the said Act. The proceedings under the said Act are therefore summary in nature so as to provide speedy relief to the aggrieved party. Hence the foundation of any proceeding under Section 5 of the said Act is the existence of a road which is in use and which has been obstructed. The inquiry in the said proceedings is therefore to be directed towards that end. The application is also to contain the object of the inquiry that is the person who has allegedly obstructed the way. In the instant case, it is the allegation of the Petitioner that the way has been obstructed by the Respondent Nos.3 and 4. The Tahsildar had accordingly considered the matter and allowed the application filed by the Petitioner. However, the SDO on the ground that there is a non-joinder of necessary parties, had set aside the order passed by the Tahsildar.

9 In my view, considering the nature of the proceedings, the presence is necessary of only those persons against whom the allegations of obstruction are made. In the instant case, it is not the case of the Petitioner that the owners of the other Hissas of Gat No.732 have in any way obstructed the road. The SDO having arrived at the conclusion that the order passed by the Tahsildar was proper, has thereafter in my view, totally mis-directed himself by holding that since the proceedings suffer from non-joinder of necessary parties, the order passed by the Tahsildar was required to be set aside. It is well settled that the revisionary jurisdiction is a very constricted jurisdiction

and the revisionary authority is therefore required to consider whether the Tahsildar's order requires any interference in the said jurisdiction. In my view, therefore, since the SDO i.e. the revisionary authority has on an erroneous premise set aside the order passed by the Tahsildar, the said order would have to be quashed and set aside and the matter would have to be relegated back to the SDO for a denovo consideration of the revision application. The contention sought to be urged on behalf of the Petitioner in Writ Petition Stamp No.16204 of 2015 can also be urged before the SDO on remand. The SDO would after giving proper opportunity to the parties decide the application. Needless to state the said exercise having been directed to be carried out denovo, the SDO to decide the said proceeding on its own merits and in accordance with law. The parties to appear before the SDO on 6th July 2015. The SDO thereafter to decide the proceeding within four weeks. The above Petitions are allowed to the aforesaid extent. Rule is accordingly made absolute with parties to bear their respective costs of the Petitions.

[R.M.SAVANT, J]