

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION St. NO.15861 OF 2015**

**M/s. Jay Malhar Krupa Drushti
through its partners
Shri Vinod Tupe
Vs.**

..Petitioner

State of Maharashtra & Ors.

..Respondents

Mr. Sanjay Patil for the Petitioner

Ms M. S. Bane "B" panel Counsel for the Respondent Nos.1 to 3

CORAM : R. M. SAVANT, J.

DATE : 22nd June, 2015

P.C.

1 The Writ Jurisdiction of this Court is invoked against the order dated 18-5-2015 passed by the Sub Divisional Officer (SDO), Bhiwandi Division, Bhiwandi, by which order, the Revision Application filed by the Petitioner herein came to be dismissed and resultantly the order dated 15-10-2012 passed by the Tahsildar in the proceedings initiated under Section 5 of the Mamletdars' Court Act, came to be confirmed.

2 The Respondent No.4 herein on the ground that the Petitioner has blocked his way to his land bearing Survey No.119/3 by putting up obstruction in land bearing Survey No.119/4/1, of the Petitioner, filed the said application under Section 5 of the Mamletdars' Court Act. It is the case of the Respondent No.4 that the said way through Survey No.119/4/1 is the only way available to him to approach his land bearing Survey No.119/3 which land he has been

cultivating. It is required to be noted that in so far as the dispute between the parties is concerned, a Suit came to be filed by the Respondent No.4 being Regular Civil Suit No.89 of 2007 for restraining the Defendants to the said Suit amongst whom was the Petitioner herein, from obstructing his right of way through the said land bearing Survey No.119/4/1. The said Suit it seems came to be compromised and it was agreed between the parties that the Respondent No.4 would be provided a right of way. However, in view of the obstruction caused by the Petitioner and one Shangrila Resorts, the Respondent No.4 initiated the proceedings under Section 5 of the Mamletdars' Court Act which proceedings culminated in the order dated 23-10-2008 being passed by the Tahsildar allowing the said application and thereafter matter being carried in Revision by the said Shangrila Resorts, which Revision Application came to be allowed and the order passed by the Tahsildar came to be set aside. It appears that thereafter the Respondent No.4 purchased the land admeasuring 12ft x 170ft from the said Shangrila Resorts, so as to provide him access to his land. The cause for filing the instant application under Section 5 of the Mamletdars' Court Act was the obstruction created by the Petitioner herein at the start of the said Survey No.119/4/1 in the way of the Respondent No.4.

3 It appears that the Petitioner has a petrol pump in the vicinity and has also a tyre repairing shop in the property. Pursuant to the application made by the Respondent No.4 site inspection was carried out by the Tahsildar

and a report obtained in which it was disclosed that the Respondent No.4 did not have any other access to go to his property and that the Petitioner by accumulating heap of mud and stones has obstructed the access of the Respondent No.4. The Tahsildar having regard to the aforesaid facts allowed the application by his order dated 15-10-2012.

4 The Petitioner aggrieved by the said order dated 15-10-2012 carried the matter by way of a Revision before the SDO, Bhiwandi Division, Bhiwandi. The SDO having regard to the material on record and especially the antecedent facts which have been stated hereinabove, came to a conclusion that the order passed by the Tahsildar dated 15-10-2012, need not be interfered with and accordingly dismissed the Revision Application by confirming the said order. However, the SDO has in the operative part wrongly mentioned the date of the order of the Tahsildar as 24-8-2009 instead of 15-10-2012.

5 The Learned Counsel appearing for the Petitioner Mr. Patil would contend that the Respondent No.4 having invoked the jurisdiction of the Civil Court could not have invoked the jurisdiction of the Revenue Authorities thereafter. The Learned Counsel in support of the said submission, placed reliance on the judgment of a Learned Single Judge of this court in the matter of **Jaglal Premlal Jayaswal & Anr. Vs.Waman Shyamraoji Dhabhade & Anr.**¹

1 2008(6) Bom.C.R.684

The Learned Counsel would contend that the said lands being non agricultural lands, the provisions of Section 5 of the Mamletdars' Courts Act would not apply.

6 In my view, it is not possible to accept the said contentions of the Learned Counsel for the Petitioner. In so far as the invocation of the jurisdiction under Section 5 of the Mamletdars' Courts Act is concerned, it is well settled that the said provisions can be invoked for a speedy removal of the obstruction which is caused. The said invocation therefore cannot found fault with. In the instant case, though inspite of the matter being compromised between the Respondent No.4 and the said Shangrila Resorts and the Petitioner herein, in the Civil Suit there was an obstruction put up in the way of the Respondent No.4, which required to be redressed urgently as the same was causing hindrance in the way of the Respondent No.4 from cultivating his land. In so far as the Judgment of the Learned Single Judge is concerned, the said judgment concerns the invocation of Section 143 of the Maharashtra Land Revenue Code under which a right of way can be claimed. The scope of the said proceedings under Section 143 therefore being different than the scope of the proceedings under Section 5 of the Mamletdars' Courts Act, which as indicated above is for speedy removal of obstruction, the said judgment would have no application. In so far as the land being N.A. Land is concerned, it is required to be noted that it is the case of the Respondent No.4 that obstruction

is in respect of going to his farm land meaning thereby that he is cultivating the land in question.

7 In my view, therefore, the exercise of jurisdiction by the Tahsildar under Section 5 of the Mamletdars' Courts Act, cannot be found fault with. Having heard the Learned Counsel for the Petitioner and having perused the orders passed by the Tahsildar as confirmed by the SDO, no case for interference in the Writ Jurisdiction of this court is made out. The Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]