

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 89 OF 2008

Baban Jagannath Doiphode .. Petitioner
VS.
Raghunath Krishnaji Dhobale & Ors. .. Respondents

Mr. S. S. Kanetkar for Applicant.
Mr. K. B. Sonwalkar for Respondent Nos. 1 and 2.
Mr. Rajan Pawar – AGP for Respondent Nos. 3 to 6.

CORAM : M. S. SONAK, J.
DATE: 22 APRIL 2015

P.C. :-

1] This Civil Revision Application challenges the following orders:

(A) Order dated 16 October 2006 made by the Tahsildar under the provisions of Mamlatdar's Court Act, 1906;

(B) Order dated 4 October 2007 made by the Sub Divisional Officer, dismissing the applicant's revision application against the aforesaid order dated 16 October 2006.

2] Both the impugned orders have been made in exercise of powers conferred upon the respective authorities under the provisions of the Mamlatdar's Court Act, 1906 (said Act). The provisions of the said Act, provide a summary remedy where it is alleged that there is obstruction or impediment upon the user of a public road, amongst other matters. In the present case, the respondent no. 1, in his capacity as Sarpanch of Gram Panchayat

of Khatkevasti made an application to the Tahsildar under the provisions of the said Act, complaining that the applicant had put up impediment on the user of the suit road, which was a public road. The Tahsildar, by order dated 16 October 2006, accepted the case set out by the respondent no. 1 and directed the removal of such impediment. The SDO, dismissed the revision application against the said order on 4 October 2007. Hence, the present revision application.

3] Mr. Kanetkar, the learned counsel for the revision applicant submitted that there was no material on record on the basis of which it could be said that the portion of the applicant's property was either a road, or a public road. Besides, Mr. Kanetkar submitted that there is not even any categoric finding recorded by both the authorities that the road in question was indeed a public road. Mr. Kanetkar submitted that the authorities under the said Act have no jurisdiction to declare some property or some road as being a public road. The jurisdiction of the authorities under the said Act extends only to removal of impediment or obstruction upon public road, which are acknowledged as such or at least in regard to which, there is sufficient material that they are indeed public roads. In as much as such aspect has been ignored by the two authorities, the impugned orders are in excess of jurisdiction and ought to be set aside.

4] Mr. Sonwalkar, the learned counsel for the respondent nos. 1 and 2, defended the impugned order by submitting that the two authorities have concurrently recorded findings of fact that the road in question was indeed a public road and that the applicant had put impediment on the user thereof without any justification or without any authority of law.

5] Having heard the learned counsel for the parties and perused the record, in my judgment, there is no case made out to interfere with the concurrent findings of fact recorded by the two authorities under the provisions of the said Act. It is not correct that there is no finding to the effect that the road in question was not a public road. The authorities, on basis of material on record, have given a finding to that effect. The revisional authority has also made reference to the repairs carried out by the Gram Panchayat to the road in question. There is reference to acquisition proceedings *inter alia* in respect of road in question. The phraseology employed by the authorities, has to be read and construed in a pragmatic manner. Ultimately, it is to be noted that the authorities under the said Act, are enjoined to decide such matters in a summary manner and it cannot be expected that the orders made by them are at par with orders made by the Civil Courts. Nevertheless, upon reading the two orders, it is clear that necessary jurisdictional findings have been rendered by the two authorities and such findings of fact

cannot be regarded as being perverse or as being based upon no material whatsoever on record. Accordingly, there is no case made out to interfere with such concurrent findings of facts.

6] The scheme of the said Act is that notwithstanding any orders made therein, the parties always have a right to approach the Civil Courts in order to establish their substantive rights in so far as their case is concerned. Accordingly, notwithstanding upholding of the orders made by the two authorities under the said Act, the applicant, is obviously not deprived of an opportunity to approach the Civil Court in order to establish his case. If the applicant does not approach the Civil Court, then such Court to decide the matter in issue, without being influenced by the orders made under the Mamlatdar's Court Act, 1906 or for that matter, the circumstance that such orders were not interfered with by this Court.

7] Accordingly, this CRA is dismissed. There shall be no order as to costs.

8] At this stage, Mr. Kanetkar, the learned counsel for the applicant prays that the interim order made by this Court during the pendency of this CRA be extended by a period of eight weeks. The request is reasonable and accordingly the interim order is extended by a period of eight weeks from today.