

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 11940 OF 2015

Babu K. Kondhre and anr. .. Petitioners
vs.
The Tahasildar, Yeola and ors. .. Respondents

Mr. Sanjay Shinde for the Petitioners.
Mr. A.R. Metkari, AGP for Respondent Nos.1 and 8.

CORAM : M. S. SONAK, J.
DATE : 2 DECEMBER 2015.

P.C. :-

- 1] Not on board. Upon production, taken on board.

- 2] The challenge in this petition is to the order dated 3 November 2015 made by Respondent No.1-Tahsildar, Yeola allowing the Respondents-original Applicants to amend their petition under the Mamlatdars' Court Act, 1906 (said Act).

- 3] Mr. Shinde, the learned counsel for the Petitioners, is entirely right in his submission that the impugned order is non-speaking. Perusal of the impugned order bears out this position. However, in the facts and circumstances of the present case, it would not be appropriate to merely set aside the impugned order on the ground that it is non-speaking and remand the matter to the Tahasildar for fresh consideration of application seeking leave to amend. This is because, the objection raised by the Petitioners to the application seeking leave to amend the petition can be disposed of, at this stage itself, particularly, considering that the proceedings under the said Act are summary in nature.

4] Mr. Shinde has contended that the proposed amendment will change the nature of original proceedings; that there is in fact, no road is in existence at the site and the application for amendment is quite vague. Mr. Shinde has also contended that the Petitioners have already already instituted a suit in relation to the dispute and therefore, no amendment application ought to have been entertained.

5] The proceedings under the Mamlatdars' Court Act are summary in nature. In case, there was any mistake or irregularity in the matter of description of the access/road in question, the parties are entitled to make necessary amendment for the purposes of clarifying the position. The circumstance that an amendment is permitted does not mean and imply that the Mamlatdar has accepted the case of the Applicants. Ultimately, the issue as to whether or not any case is made out for exercise of powers under the said Act shall have to be decided, in accordance with the material placed by the parties on record and the law in that regard. The issue as to whether any road exists at the site or not is also not required to be gone into, at the stage of deciding whether leave to amend is required to be granted. Perusal of the application seeking leave to amend indicates the same is by no means vague. The circumstance that the suit has been instituted by the Petitioners will be considered by the Mamlatdar. The Petitioners are not precluded from raising any contentions available under the law, merely because leave to amend has been granted. It is clarified that all contentions of all parties are kept open.

6] The next prayer in the Petition is that the Petitioner's Application under Order 7 Rule 11 of the C.P.C. made by the Petitioners should be considered by the Mamlatdar. Perusal of the provisions contained in the said Act would indicate that the provisions Under Order 7 Rule 11 of the C.P.C. are not applicable to it. Accordingly, no directions can be issued to the Mamlatdar to consider the Petitioners' application under Order 7 Rule 11 of CPC. Accordingly, prayer clause (c) is denied.

7] In view of the aforesaid, this petition is dismissed. There shall, however, be no order as to costs.

(M. S. SONAK, J.)

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