

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

16 WRIT PETITION NO. 2690 OF 2016

AKBAR ALI AMJAD ALI
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

Shri. Masood C. Syed, Advocate, for petitioner.

Shri. U.H. Bhogale, Assistant Government Pleader, for
respondent Nos.1 and 2.

Shri. G.R. Syed, Advocate, holding for Shri. A.R. Syed,
Advocate, for respondent No.3.

CORAM: T.V. NALAWADE, J.

DATE : 29 AUGUST 2016

ORDER:

1) The petition is filed to challenge the order made by the Additional Collector, Parbhani in Revision No.43/2015. By allowing the revision filed by the respondent, the authority has set aside the order made by the learned Tahsildar, Parbhani in Case No.2015/Jama-1/ROR/Kavi-13 dated 27-5-2015. Heard both the sides.

2) Present petitioner had filed application before the Mamlatdar, under the provisions of the Mamlatdars' Courts Act 1906. He had prayed for removing obstructions which were created by the present respondent on the way passing through his Survey No.76. Summons of the petition was served on the respondent but he did not turn up and so *ex parte* order was made against the present respondent. By making such order the road having width 50 feet and length 500 feet was given by the authority in favour of the present petitioner. This order is set aside by the Additional Collector and the matter is remanded and the Additional Collector has directed the Mamlatdar to make inquiry by personally visiting the spot.

3) Learned counsel for the petitioner submitted that in view of the provisions of the Mamlatdars' Courts Act there was no necessity to visit the spot and also make inspection by visiting the spot as the panchanama was made by the Circle Officer in the presence of many persons and this record could have been used by the Mamlatdar. He placed reliance on a case reported as **2014 CJ (Bom) 2777** Nagpur Bench of this Court

(between Sow Anjali and The Sub Divisional Officer). He submitted that the Additional Collector has no power to order the Tahsildar to make such inquiry.

4) This Court has gone through the provisions of section 23(2) of the Act, power to the Collector to entertain revision against order made by the Mamlatdar under this Act. The relevant portion is section 23(2) which runs as under :-

"23. Bar of appeal -

(1) . . .

(2) But the Collector may call for and examine the record of any suit under this Act, and if he considers that any proceeding, finding or order in such suit is illegal or improper, may, after due notice to the parties, pass such order thereon, not inconsistent with this Act, as he thinks fit."

5) The Collector is admittedly the authority having power to call record from the lower authority and ascertain illegality or irregularity in the proceeding. The procedural aspect can also be considered by the Collector and it cannot be said that only when illegality is there, revisional powers can be used by the Collector. The circumstance that the Collector has directed the

Mamlatdar to visit the spot and make personal inspection shows that he advised to follow the procedure given under the aforesaid Act.

6) This Court has gone through the provisions of Sections 14(3) and 19(2) of the Mamlatdars' Courts Act. These provisions show that the Mamlatdar can make inquiry at the scene of dispute or the other place which is convenient to the party. Provision of Section 19(2) gives power to the Mamlatdar to visit the site and it runs as under :-

"19. Points to be decided by Mamlatdar at hearing.

(1)

(2) The Mamlatdar may, after due notice to, and in the presence of, the parties summon and examine as a witness any person who has not been summoned or produced, and may call for and cause to be proved any document which has not been applied for or produced, by either of the parties, where he considers it expedient in the interest of justice so to do, and may, if he thinks fit, make a personal inspection of the property in dispute in the presence of, or after due notice to, the parties. He shall without unnecessary delay record a memorandum after hearing the parties on the spot, if present, of any relevant facts observed at such inspection. the memorandum shall form part of the record of the case."

7) When the dispute is taken before Mamlatdar and it is the case of the applicant that there is road in existence which was in use in the past and the opponent is creating obstruction to the use of that road, it becomes necessary for the Mamlatdar to make proper inquiry and the inquiry involves the inquiry made on the site with the adjacent owners because it is not only the applicant who will get right to use but the others also will be entitled to use that portion as road. In view of these circumstances it is always advisable for the Mamlatdar to go to the spot where the adjacent owners will also come and they can supply information to the inquiring authority. In view of this, the Collector has made aforesaid order and this Court holds that the order cannot be called as illegal and not within the powers of the Collector.

8) If the canal is there, in ordinary course there needs to be road created by the acquiring body which is generally kept parallel to the canal and can be used for repairs of the canal. If such road is in existence and that can be used by the owners of Survey Nos.76 & 77. In such situation, there will not be necessity to create new road.

9) There is one more point in the present matter. The road having 50 feet width and 500 feet length is given by the Mamlatdar and he has described that road as cart road. Cart road is defined in Rules, 1969. It can be said that the order made by the Mamlatdar is not in conformity with that rules also. Thus, the order of the Mamlatdar was illegal and it can be said that interference by the Collector was right and this Court need not interfere in such order. The writ petition is dismissed. The proceeding is to be expedited by the Mamlatdar and in any case within four months from the date of receipt of this order.

Sd/-
(T.V. NALAWADE, J.)

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