

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4639 OF 2013

Ramesh Damu Patil,
Age : 47 years, Occu : Agril.,
R/o. Sawarala, Tq. Jamner,
Dist. Jalgaon.

VERSUS

- 1) Purushottam Umrao Chavan,
Age : Major, Occu : Agril.,
- 2) Shivram Rupchand Jadhav,
Age : Major, Occu : Agril.,
- 3) Tulsabai Govinda Jadhav,
Age : Major, Occu : Agril.,
- 4) Suresh Govinda Jadhav,
Age : Major, Occu : Agril.,

All R/o Sawarala,
Tq. Jamner, Dist. Jalgaon.
- 5) Tahasildar, Jamner,
Tq. Jamner, Dist. Jalgaon.
- 6) Sub Divisional Officer
Jalgaon, Dist. Jalgaon.

Mr. Girish V. Wani, Advocate for the petitioner
Mrs. Anudip Sonar, Advocate h/f. Mr. V.B. Patil, Advocate for respondent Nos.
1 to 4
Mr. S.B. Pulkundwar, AGP for respondent Nos. 5 and 6.

CORAM : K.K. SONAWANE, J.
DATE : 23rd SEPTEMBER, 2016.

ORAL JUDGMENT : -

1] Rule. Rule made returnable forthwith. Taken up for final hearing with the consent of counsel for both sides.

2] The petitioner has assailed the order dated 30.10.2012 passed by the learned Sub Divisional Officer, Jalgaon in Revision Application No. 25 of 2011 thereby confirming the order passed by the learned Tahsildar, Jamner in the proceeding Vahivat Case No. 63 of 2010, dated 8th December, 2010, rebuffing the relief for cart track from the land of the respondent to egress ingress of the the land of the petitioner Gat No. 142/1 of village Savrala, Taluka Jamner.

3] It has been contended that the petitioner is the owner of the land Gat No. 142 admeasuring 61R located at village Savrala, Taluka Jamner, District Jalgaon. Petitioner has to approach to his land from way/cart track in existence from land Gat No. 146/1/A-1/1 of the respondent Purushottam Chavan, Gat No. 138 owned by respondent Shivram Jadhav and Gat No. 141 owned by respondent Tulsabai Govinda Jadhav and Suresh Jadhav. The petitioner alleged that respondent created obstruction in the enjoyment of the way/cart track by him. Therefore, he approached to the Tahsildar, Jamner and filed proceeding bearing Vahivat Case No. 14 of 2008 against the respondents. The learned Tahsildar, after appreciating the circumstances on record, allowed the application and bade the respondents not to create obstructions in the enjoyment of the way/cart track leading to Gat No. 142/1 from the East-West Bandh (boundry) of Gat No. 146/1/A-1/1 of the

respondents.

Being dissatisfied with the said order of the Tahsildar, the respondent Purushottam Chavan approached to the Assistant Collector, Jalgaon and filed Revision Petition No. 5 of 2009 for redressal of his grievances. The learned Assistant Collector, Jalgaon, considering the factual aspects on record dismissed the revision petition by order dated 27.10.2009. Thereafter, the respondent Purushottam Chavan preferred Civil Revision Application No. 187/2009 before this Court which came to be allowed by order dated 16.11.2010. The impugned order passed by the learned Tahsildar in Vahivat Proceeding NO. 14 of 2008 dated 23.2.2009 and the order in Revision Petition NO. 5 of 2009 dated 27.10.2009 passed by the Assistant Collector came to be quashed and set aside by allowing petition filed by respondent No.1 Purushottam Chavan.

4] However, the petitioner, once again by availing remedy under Section 5 of the Mamlatdars Courts Act, 1906 filed another petition before the learned Tahsildar, Jamner vide Application No. 63 of 2010 and prayed for prohibitory order of injunction against the respondent not to create obstructions in the Cart track/Pathway from the land of the respondent to approach his land Gat No. 142/1.

5] The learned Tahsildar, after appreciating the principles of resjudicata under Section 11 of the Code of Civil Procedure rejected the application and passed the impugned order dated 15.12.2011 in the

proceeding No. 8/2015 (Old case No. 63/2010). The petitioner again filed a revision application No. 25 of 2011 before the Sub Divisional Officer, Jalgaon under Section 23(2) of the Mamlatdars Courts Act and requested to quash and set aside the impugned order passed by the learned Tahsildar dt. 15.2.2011 and prayed for grant of prohibitory orders against the respondents not to create obstruction for utilizing the way/cart track through land of the respondent leading to his Gat No. 142/1. The learned Sub Divisional Officer, applied his mind and upheld the order passed by the Tahsildar and rejected the revision petition. The said order passed by learned SDO is the subject matter of challenge in the present petition.

6] Learned counsel appearing for the petitioner vehemently submitted that the impugned order/s passed by the SDO as well as Tahsildar are erroneous, illegal and not within the ambit of law. The learned revenue authorities did not appreciate the principles of resjudicata in its proper perspective and committed error. The SDO did not appreciate the factual aspect in proper manner and passed the impugned order which is against the principles of natural justice. Hence, the learned counsel requested to allow the petition and quash and set aside the impugned order passed by the learned Sub Divisional Officer.

7] Learned counsel for the respondent opposed the contentions put forth on behalf of the petitioner and prayed for dismissal of the writ petition. I have also heard the learned AGP on behalf of the respondent Revenue Authorities.

8] I have given anxious consideration to the arguments advanced on behalf of both sides. Apparently, on the face of record, it appears that the learned Sub Divisional Officer, Jalgaon by exercising powers under Section 23(2) of the Mamlatdars Courts Act, 1906 dealt with the proceedings and passed the impugned order rejecting the revision application of the petitioner.

9] Provisions of Section 23(2) of the Mamlatdars Courts Act are reproduced as under :-

“23(2) Collector's power to revise Mamlatdar's proceedings :
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.”

10] At this juncture, it would be profitable to make reference to the provisions of Section 23(2A) in regard to the delegation of powers of the Collector to his Subordinate Officers. Provision of Section 23(2A) contemplates as under :-

“23(2A) Delegation to Collector's powers : The Collector may delegate the powers conferred on him by this section to any Assistant Collector, Deputy Collector, or Assistant Commissioner subordinate to him.”

11] The aforesaid provision of Section 23(2A) of the Mamlatdars Courts Act manifestly demonstrate the revisional powers of the Collector to call and examine records of any suit under the Mamlatdars Courts Act and if he is of the opinion that any finding or order in such suit is illegal and improper, he may after due notice to the parties pass suitable order not inconsistent with the provisions of the Act, as he thinks fit. The provision of Section 23(2A) pertains to delegation of powers of the Collector under the Mamlatdars Courts Act. It prescribes that the Collector may delegate the powers conferred on him under Section 23(2) of the Mamlatdars Courts Act to any Assistant Collector, Deputy Collector or Assistant Commissioner subordinate to him. In such circumstances, it is evident that the powers conferred on the Collector under Section 23(2) could not be delegated to the SDO but these powers could be exercised only by the Assistant Collector, Deputy Collector or Assistant Commissioner subordinate to the Collector. There are no documents produced on record to show that the powers have been delegated to the Sub Divisional Officer under the Mamlatdars Courts Act, 1906.

12] It is true that the provisions of Section 13(4) of the Maharashtra Land Revenue Code, envisages powers of the SDO, i.e. to perform all the duties and functions and exercise all powers conferred upon the Collector under the Maharashtra Land Revenue Code. But, the bare reading of Section 13(4) of the Maharashtra Land Revenue Code reflects that the SDO, subject to the provisions of Chapter XIII of the MLR Code perform all the duties,

functions and exercise all the powers conferred upon the Collector by the Maharashtra Land Revenue Code or any law for the time being in force in respect of the sub divisions in his charge. Albeit, it cannot be said that the Sub Divisional Officer has jurisdiction to deal with the proceedings by invoking powers of the Collector under Section 23(2) of the Mamlatdars Courts Act, 1906. The provisions of Section 23(2A) of the Mamlatdars Courts Act, 1906 makes it clear that these provisions does not authorize the Sub Divisional Officer to exercise powers conferred upon the Collector. In the case of ***Bija Maroti Hatwar vs. Kisan Chirkut Padole and another*** reported in 2015(1) Mh.L.J. 282, the learned Single Judge of this Court at Nagpur had an opportunity to deal with an identical issue and it has been categorically held that the revisional powers under Section 23(2) of the Mamlatdars Courts Act are required to be exercised by the Collector himself or further delegation of powers can be made to Assistant Collector, Deputy Collector or Assistant Commissioner. But, the Sub Divisional Officer is not empowered to invoke powers under Section 23(2) of the Mamlatdars Courts Act, 1906. The same issue has also been decided in W.P. No. 757 of 2016 ***Bacchulal Narayandas s/o. Rambilas Rathi & another vs. Mohan Bhagwatrao Thakare and others***, and in W.P. No. 4609 of 2015 ***Narayan Bhagwan Bholankar and others vs. Dattatraya Digambar Tayade and others***. In these writ petitions, the learned Single Judges have rendered the same verdict and ruled that the powers of the Collector under Section 23(2) of the Mamlatdars Courts Act cannot be delegated in favour of the Sub-Divisional Officer.

13] In the matter in hand, it is reiterated that the order impugned in this petition which is passed by the Sub-Divisional Officer, Jalgaon, is apparently without jurisdiction. Therefore, instead of considering the merits of the matter for evaluating the legality and validity of the impugned order, same needs to be quashed and set aside. The matter is required to be relegated back to the Collector, Jalgaon for adjudication of the issues in dispute afresh, on its own merits, for exercising powers under Section 23(2) of the Mamlatdars Courts Act, 1906. Hence, I pass the following order :-

[a] The impugned order is quashed and set aside on the ground that the SDO has no authority and jurisdiction to exercise powers under Section 23(2) of the Mamlatdars Courts Act.

[b] The matter is relegated back to the Collector Jalgaon for adjudication of the issues in dispute afresh on its own merits, by exercising powers under Section 23(2) of the Mamlatdars Courts Act, 1906.

[c] Rule is made absolute in above terms. There shall be no orders as to costs.

[K.K. SONAWANE]
JUDGE.

grt/-