

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

38 WRIT PETITION NO. 8277 OF 2015

DHARMENDRA LAXMANRAO BHOPALE AND ANOTHER
VERSUS
THE ADDITIONAL COLLECTOR, BEED AND OTHERS

Shri. S.S. Thombre, Advocate, for petitioners.

Shri. S.K. Tambe, Assistant Government Pleader, for
respondent Nos.1 and 2.

Shri. B.K. Patil, Advocate, for respondent No.6.

CORAM: T.V. NALAWADE, J.

DATE : 5 DECEMBER 2016

ORDER:

1) The petition is filed to challenge the orders made by the learned Tahsildar and the Sub Divisional Officer under the provisions of the Mamlatdars' Courts Act, 1906. Both the sides are heard.

2) Application was moved by few villagers under the aforesaid Act before the Mamlatdar and request was made to remove the encroachment which was made on old

cartway of the village which was shown in the revenue map.

3) After making inquiry, learned Mamlatdar made the order and directed his subordinates to see that the obstructions created on the road were cleared. It appears that present petitioners were not made party opponents in the said proceeding but they challenged the aforesaid order by filing appeal under the Act bearing No.11/2014. The learned Sub Divisional Officer decided the appeal and held that there was no force in the defence taken and dismissed the appeal. In view of these two decisions and as the properties like Gat Nos.73 and 36 of the petitioners will be affected according to the petitioners, the present petition is filed.

4) Learned counsel for the petitioners submitted that in view of provisions of sections 5 and 7 of the Act it was necessary to apply the procedure laid down for institution of the proceeding by the applicants of the aforesaid proceeding but that procedure was not followed and so the proceeding itself ought to have been rejected.

Learned counsel then drew attention of this Court to the provision of section 12 of the Act provided for rejection of the plaint. This Court has also gone through the other provision like section 8 of the Act. Only one inference is possible that the procedure is directory in nature and the defects, if any, in the application can be cured by the authority. In any case when cognizance of the matter was taken by the authority, the technicalities can be ignored and the proceeding can be taken to further stages. Learned counsel for the petitioners has placed reliance on the observations made by this Court in **Writ Petition No.575/2013 (Jyotiram Dagdu Satpute v. The State of Maharashtra)**; and, **Writ Petition No.3996/2013 (Shrikrishna Vishnu Shelke v. The Tahsildar, Osmanabad)**. This Court has carefully gone through the observations made by this Court in these two cases. The observations also do not show that the provisions are mandatory in nature. The fact that in section 8 itself it is made clear that the defects can be cured is sufficient to infer that the provisions are not mandatory in nature. It can be said that the present petitioners involved themselves in the matter by filing appeal and so they cannot say now that they were not

party or no opportunity was given to them. There is one more circumstance like virtual undertaking given by the petitioners when the authority went to the land for removal of the obstruction. It was submitted by the learned counsel for the petitioners that at the relevant time there were standing crops in the land and it was stated that after harvesting the crops measurement could be made for clearing the road.

5) Learned counsel for the petitioners submitted that opportunity was not there to the petitioners to put up their case. This Court has gone through the contents of the appeal filed before the appellate authority. It is the only contention of the petitioners that though in the past there was such cart-way in existence, which was public cart way, the cart way was closed and necessary correction was made even in the revenue map. The petitioners have produced copy of revenue map on the record which was corrected and prepared till the year 1990 and the copy was issued in the year 2004. This map shows that cart way is shown passing through land Gat Nos.73 and 36. Thus, there is no force in the contention of

the petitioners that the previous cart way was closed. Thus when the petitioners themselves are admitting that there was public cart way in existence it was necessary for the petitioners to make out the case as to how they are entitled to close the public cart way which was shown in the map right from beginning.

6) Provisions of section 5 of the Act are the enabling provisions and give power to the authority like Mamlatdar to remove obstructions created on public way also. When it is public way it is not that difficult for the authority to decide the rights of the parties like present petitioners as there was public way in existence. Thus, there is no error committed in passing the order by the authority like Mamlatdar which is confirmed by the appellate authority. In the result, the petition stands dismissed. Interim relief is vacated. Request for continuation of interim relief for few days is rejected.

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

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