

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 119 OF 2018**

Shree Bhagwati Vahiwatdar Committee ... Petitioner
Versus
Prashant A. Harmalkar & 2 Others ... Respondents

Shri Devidas Pangam with Shri Shivadatta P. Munj, Advocates for the Petitioner.

Shri Chaitanya Padgaonkar, Advocate for the Respondents.

CORAM : C.V. BHADANG, J.

DATE : 13th JUNE 2018

ORAL ORDER:

Heard Shri Pangam, the learned Counsel for the petitioner and Shri Padgaonkar, the learned Counsel for the respondents. Perused record.

2. The challenge in this petition is to the order dated 21.04.2016, passed by the learned Mamlatdar, rejecting the application filed by the petitioner (respondent before the Mamlatdar), seeking dismissal of the application filed by the respondent (applicant before the Mamlatdar), under Section 4 of the Goa, Daman and Diu Mamlatdar's Court Act, 1966 (Act, for short). The order of the Mamlatdar has been confirmed by the learned Additional Collector vide judgment and order dated 13.12.2017.

3. Shri Pangam, the learned Counsel for the petitioner has raised three contentions. Firstly it is contended that the Mamlatdar cannot adjudicate a claim (regarding right of way or any obstruction thereof) based on the easementary rights. Secondly, it is contended that in any case, under the provisions of the Act, the Mamlatdar cannot grant motorable access, as claimed by the respondents and lastly, it is contended that the application is exfacie barred by limitation. He submits that the last objection on limitation was not raised before the Mamlatdar.

4. Shri Padgaonkar, the learned Counsel for the respondents states that a complaint was made in the year 2011 itself, on the basis of which, a notice was issued to one Atmaram Prabhu Desai. He submits that the application dated 13.07.2012 was only by way of an amendment and thus, the application was within time. It is next contended that sub-section 2 of section 4 of the Act, would indicate that the Mamlatdar can remove the obstruction in the use of roads or a right of way thereto. It is submitted that the “use of roads”, would include a motorable access. Lastly, reliance is placed on the decision of the Gujarat High Court in the case of **Lakshmanbhai Ukabhai Parmar Vs. Karmsibhai Lalabhai Parmar, (2014) 3 GLR 2148**, in order to submit that adjudication of a claim, based on easementary rights, is not beyond the scope of the powers of the Mamlatdar.

5. On perusal of the record, it does appear that the main application, under Section 4 of the Act is filed before the Mamlatdar way back in the year 2011 and is at the stage of recording evidence. On hearing the learned Counsel for the parties, I find that the matter requires consideration, which can be appropriately done by the learned Mamlatdar, while deciding the application on merits. As noticed earlier, the matter is fixed for evidence of the parties. It would not be advisable at this stage and particularly when the matter is pending for more than six years to direct the learned Mamlatdar to dispose of the application on the basis of a preliminary issue.

6. Shri Pangam, the learned Counsel for the petitioner submitted that the petitioner may be allowed to raise an objection about limitation. The petitioner would be at liberty to file application, seeking framing of issue of limitation. If such an application is filed, the same shall be decided on its own merits and in accordance with law. If an issue on limitation is framed, the same shall be taken up for consideration at the final hearing of the main application on merits. Rival contentions of the parties are left open. Petition is disposed off in the aforesaid terms.

C.V. BHADANG, J.