

vai

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6812 OF 2016

Gorakhanath H. Darekar	...Petitioner
V/s.	
Yashwat A. Bhosale & Ors.	...Respondents

Mr.Drupad S. Patil with Mr.B.G. Ligade for the Petitioner.

Mr.Rajiv Patil, Senior Advocate i/b Mr.Vishal L. Kolekar for the Respondent No.1.

Mr.S.D. Rayrikar, A.G.P. for the State – Respondent Nos.3 and 4.

CORAM : R.D. DHANUKA, J.
DATE : 1ST AUGUST, 2018.

P.C. :-

1. By this petition filed under Article 227 of the Constitution of India, the petitioner has impugned the order dated 22nd July, 2015 passed by the respondent no.4 – Sub-Divisional Officer and also an order dated 30th September, 2015 passed by the learned Tahsildar, allowing the application filed by the respondent no.1 under section 5(4) of the Mamalatdar Court Act, 1906.

2. It is the case of the respondent no.1 that the respondent no.1 is the owner of the plot bearing survey no.112/5, whereas the petitioner is the owner of the land survey no.112(4).

3. It was the case of the respondent no.1 that since

inception of the respondent no.1 purchasing the said land, there was a right of way available to the petitioner from the plot of the petitioner. The respondent no.1 has been cultivating on the land owned by him. The respondent no.1 accordingly filed an application under section 5(2) of the Mamalatdar Court Act, 1906 before the learned Tahsildar. Learned Tahsildar passed an order, which was set aside by the Sub-Divisional Officer and the matter was remanded back. Upon remand, the learned Tahsildar passed a fresh order and rendered various findings about the carriage way in use prior to transfer of the alleged plot and directed the petitioner to remove such obstructions so as to restore access to the respondent no.1.

4. Mr.D.S. Patil, learned counsel appearing for the petitioner invited my attention to various documents annexed to the writ petition and would submit that there was existing road available to the respondent no.1 from the boundary of the plot as a matter of record. The respondent no.1 however filed an application for new access. He submits that his client has no objection if the respondent no.1 is allowed to be use the access from the boundary of the eastern side as and by way of access.

5. Learned counsel placed reliance on two judgments of this Court in case of **Baburao Maruti Sawant vs. Hanumant Yada Naik & Ors.** in Writ Petition No.2086 of 2013 and the judgment of this

Court delivered on 30th September, 2016 in case of **Vishnu Sukhdev Ghanvat & Ors. vs. The Collector, Ahmednagar & Ors.** in support of his submission that in the application under section 5(2) of the Mamalatdar Court Act, 1906, the learned Tahsildar has no power to create a new road in favour of the applicant.

6. Mr. Rajiv Patil, learned senior counsel for the respondent no.1 on the other hand invited my attention to the application made by the respondent no.1 and would submit that the application made by the respondent no.1 was for removal of the obstructions under section 5(2) of the Mamalatdar Court Act, 1906 and not for creation of any road from the plot of the petitioner. He invited my attention to the findings rendered by the learned Tahsildar in the first order, which was set aside by the learned Sub-Divisional Officer and the second order which was passed upon remand of the matter by the learned Sub-Divisional Officer. He submits that the learned Tahsildar had visited the plot twice i.e. initially in the year 2009 and thereafter on 31st July, 2013 and found that a portion of the land of the petitioner which was available to the respondent no.1 as and by way of access was obstructed by the petitioner by constructing a boundary wall and thus an order of removal of such obstructions could be passed under section 5(2) of the Mamalatdar Court Act, 1906. The said finding of fact has been upheld by the learned Sub-Divisional Officer in the

impugned order.

7. A perusal of the findings rendered by the learned Tahsildar clearly indicates that the learned Tahsildar had visited the plot of the petitioner twice initially in the year 2009 and thereafter on 31st July, 2013. It was not the case of the respondent no.1 before the learned Tahsildar that he wanted a separate road as and by way of access from the land of the petitioner. The application was clearly made under section 5(2) of the Mamalatdar Court Act, 1906 for removal of the obstructions created by the petitioner. Learned Tahsildar also has rendered a finding that there was carriage way available to the respondent no.1 from the plot of the petitioner which was obstructed. In my view, the judgments of this Court relied upon by Mr.Patil, learned counsel for the petitioner would thus be of no assistance to the petitioner.

8. In my view, the findings of fact rendered by the learned Tahsildar, which is confirmed by the learned Sub-Divisional Officer are not perverse and thus cannot be interfered with by this Court in this writ petition filed under Article 227 of the Constitution of India.

9. The petition is devoid of merit and is accordingly dismissed. There shall be no order as to costs.

(R.D. DHANUKA, J.)