IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

930 WRIT PETITION NO.12214 OF 2016

HABEEB IDRUS H ABDUL RAHEMAN
VERSUS
SHARIFA SURRIYA HABEEB HAMED AND ANOTHER
...
Advocate for Petitioner : Mr. S. D. Tawshikar
Advocate for Respondent Nos. 1 & 2 : Mr. R. J. Godbole
Advocate for Respondent Nos. 3 to 5 : Mr. S. K. Mazhar A. Jahagirdar
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CORAM : M. S. KARNIK, J.

DATE : 20th AUGUST 2019

PER COURT :

Heard learned counsel for the petitioners.

2. Petitioner is owner of land Gut No.50. Respondent No.1 is the owner of land Gut No.51. Respondent No.1 filed an application under Section 143 of Maharashtra Land Revenue Code contending that there was an existing road on the western side of land Gut No.57 and passing through land Gut No.50 to approach land Gut No. 51 belonging to respondent No.1. Though the application is filed under Section 143 of the Maharashtra Land Revenue Code, from perusal of the order passed by the Tahsildar at page No. 26 would

reveal that an enquiry has been conducted in terms of Section 5 of the Mamlatdars' Courts Act, 1906.

3. It is the contention of the learned counsel for the petitioner that if the application is filed by respondent No.1 under Section 143 of the Maharashtra Land Revenue Code, it was not open for the Tahasildar to have proceeded with the enquiry in terms of the Section 5 of the Mamlatdars Court Act. In support of his contention learned counsel for the petitioner relied upon the decision of this Court in the case of ***Krushna s/o Damaji Choudhari and another Vs. Additional Commissioner, Nagpur and others, reported in 2012 (1) Mh.L.J. 795***. There is no dispute in the proposition laid down by this Court in the case of ***Krushna*** (supra). This court held that the application under Section 143 of the Maharashtra Land Revenue Code cannot be treated as a suit under Section 5 of the Mamlatdars' Courts Act and the Tahsildar exercising powers under Section 143 cannot direct removal of obstruction. In my opinion the said decision is not applicable to the facts of the

present case. Though the application is filed by respondent No.1 and styled as an application under Section 143 of the Maharashtra Land Revenue Code, none the less averments made in the application as well as the powers exercised by the Tahsildar would reveal that the notice is dealt with under Section 5 of the Mamlatdars' Courts Act. The decision in the case of ***Krushna*** *(surpa)* is not applicable in the present case.

4. It is further case of the learned counsel of the petitioner that the panchanama has not been appreciated properly by the authorities below. He would submit that respondent No.1 who is the owner of land Gut No. 51 can have an approach road from land Gut No. 57. In the submission of learned counsel for the petitioner the sons of respondent No.1 have purchased land Gut No.57 and therefore, it would be convenient for respondent No.1 to directly access their land from land Gut No. 57. According to learned counsel for the petitioner, this aspect has not been taken into consideration by the authorities below.

5. I have also heard the learned counsel for the intervener, who is respondent No.3 and is the owner of land Gut No. 49. He supported the case of the petitioner. He would submit that land Gut No. 49 is owned by respondent No.3 and without making him a party, the authority below has proceeded to pass the order under section 5 of the Mamlatdars Courts Act. This according to him vitiates the order.

6. Learned counsel for respondent No.1 on the other hand supported the order passed by the authorities below. He invited my attention to the panchanama, which is at page No. 16. The said panchanama is also relied upon by learned counsel for the petitioner. From the panchanama it is revealed that there is a road passing from the western side of land Gut No. 57 and then it turns into land Gut No. 50 to approach land Gut No. 51 belonging to respondent No.1. Both the authorities below have opined that the said road is the only approach road and the obstruction is caused by the petitioners in respect of the right of the user of said road which has been in existence

for long time. Considering the findings recorded by the Courts below on the materials on record, it is not necessary to interfere with the said findings. The said findings are not perverse. Merely because sons of respondent No.1 purchased land Gut No. 57 is no ground for the petitioner as well as respondent No.3 to contend that respondent No.1 should use the road from land Gut No. 57. The panchanama does not indicate that there is an approach road existing from land Gut No. 57 to approach land Gut No.51.

7. Even the Revisional Authority has taken into consideration the objection raised by the petitioner about the maintainability of the application made by respondent No.1 under Section 143 of the Maharashtra Land Revenue Code in the context of exercising powers under Section 5 of the Mamlatdars Court Act. The Revisional Authority has also applied its mind to the averments made in the application, which are in nature of application under Section 5 of the Mamlatdars Courts Act. An enquiry is conducted by the Tahasildar in terms of Section 5 of

the Mamlatdars Courts Act. In this view of the matter, I do not find any reason to interfere with the findings recorded by the concerned authorities.

8. It is pertinent to note that respondent No.3 has intervened in this petition, but has not challenged the orders passed by the Mamlatdars Court. It is his contention that he was not made a party. If it is his contention that the order passed by the Mamlatdar Court is made without hearing him, then it is necessary for respondent No.3 to seek reliefs before the proper forum. Keeping this liberty open, the petition is dismissed.

9. At the request of learned counsel for the petitioner the interim arrangement during the pendency of this petition to continue for a period of eight weeks from today.

(M. S. KARNIK, J.)

vsm/