

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

WRIT PETITION NO. 14096 OF 2018

- 1] Udhavsingh S/o. Sahebsingh Pawar
Age : 51 years, Occu. Agri.,
R/o. Ghongarde Hadgaon,
Taluka Ambad, District Jalna.
- 2] Janardhansingh S/o. Bhagujisingh Pawar,
Age : 62 years, Occu. Agri.,
R/o. As above. Petitioners

Versus

- 1] The Additional Collector,
Jalna, District Jalna.
- 2] The Tahsildar-Cum-Mamlatdar,
Ambad, District Jalna.
- 3] Badalsingh S/o. Narayansingh Pawar,
Age : 48 years, Occu. Agri.,
R/o. Ghongarde Hadgaon,
Taluka Ambad, District Jalna. Respondents

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Shri. Sachin S. Deshmukh, Advocate for the petitioners
Shri. A. B. Chate, AGP for respondent/State
Shri. Uday Dalvi, Advocate for respondent No. 3

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CORAM : P. R. BORA, J.

DATED : 31ST JULY, 2019

ORAL JUDGMENT:-

1. Rule. Rule made returnable forthwith. Heard finally
with the consent of the parties.

2. Present respondent No. 3, on 18.02.2015, had approached the Mamalatdar, Ambad by filing a written application alleging therein that his way to enter into his field has been obstructed by the present petitioners. On receiving such application, enquiry was carried out by the Mamalatdar and vide order passed on 29.12.2016, the learned Mamlatdar allowed the application of the present respondent no. 3 and directed the present petitioners to remove the obstruction and clear the way for present respondent No. 3 to enter into his field. The aforesaid order was challenged by the petitioners in Writ Petition No. 1330 of 2017. This Court vide order passed on 14th September, 2017 remitted the matter to Mamlatdar to decide it afresh keeping in mind the observations made in the said order. The ld. Mamlatdar after the matter was remitted by this Court vide the aforesaid order, re-heard the matter by giving opportunity of adducing evidence to the parties concerned and passed a final order on 16.11.2017 and thereby confirmed order previously passed on 29.12.2016. Petitioners challenged the said order by filing an appeal before the Collector, Jalna. Vide order dt. 21.08.2018, the Collector dismissed the said appeal and confirmed the order passed by the Mamalatdar. Aggrieved by, the petitioners have filed the present petition.

3. Shri. Sachin Deshmukh, learned counsel appearing for the petitioners has assailed the impugned order on various grounds. The learned counsel taking me through the provisions of Mamlatdars' Court's Act, 1906 (hereinafter referred to as "the said Act") more particularly, the provisions of Section 5 onwards till Section 13 of the said Act, submitted that, it was incumbent on the part of present respondent No. 3 to substantially comply with the provisions as are incorporated in the said Act as mentioned herein above. The learned counsel submitted that, the specific objections were raised by the present petitioners by filing their written statement pointing out that the application as presented by respondent No. 3 was not complying with the mandatory requirements as enumerated under Sections 5, 6, 8 and 9 of the Mamlatdar's Act. The learned counsel submitted that, despite the specific objection, no amendment was made and the matter was continued without removing the lacunas which were pointed out. The learned counsel further submitted that, when the order dtd. 29.12.2016 passed by respondent No. 2 was set aside by this Court vide Judgment and Order dt. 14.09.2017 in Writ Petition No. 1330 of 2017, the Mamlatdar has manifestly erred in restoring the same vide the impugned order dt. 16.11.2017. The learned counsel submitted that, on this ground alone the impugned order deserves to be quashed and aside.

4. The learned counsel further submitted that, when specific provisions are made in the said Act, that have to be complied with in letter and spirit. The learned counsel submitted that, Section 10 of the said Act mandates that the plaint is to be verified, but it was not verified by respondent No. 3. The learned counsel further pointed out that, Section 7 of the said Act, though, obligates the petitioners to provide in the plaint the particulars as are enlisted from clauses (a) to (f) of the said section, if the application filed by respondent No. 3 is perused, most of the particulars are lacking. My attention was also invited by the learned counsel to the provisions under Section 10, 11 and 12 of the said Act. The learned counsel submitted that, for want of compliance of all those provisions, the Mamlatdar in fact must have rejected the application at the threshold. The learned counsel submitted that, discarding the objections raised in that regard, the ld. Mamlatdar has passed the impugned order and while passing the order has committed an unpardonable mistake to confirm the order which has been set aside by this Court. The ld counsel, in the circumstances, prayed for setting aside the impugned order on aforesaid grounds.

5. The ld. Counsel submitted that, more casual approach has been shown by the appellate authority i.e. Addl. Collector, Jalna,

in dealing with the appeal filed by the present petitioners. The ld. Counsel submitted that, without providing even *prima facie* reasons, the order passed by the Mamlatdar has been confirmed by the ld. Addl. Collector that too overlooking the order passed by this Court and the other material placed on record. The ld. Counsel prayed for setting aside the said order.

6. Shri. Uday Dalvi, learned counsel appearing for respondent No. 3 supported the impugned order. The ld. Counsel pointed out that, in the application filed on 28.02.2016, all necessary particulars are provided by respondent No. 3 which are required to be contained in a suit to be filed u/s 7 of the Mamlatdar's Act. The ld. counsel submitted that, in the inquiry conducted by ld. Tahsildar, in the initial round of litigation, the spot inspection was carried out in presence of the independent panch witnesses and it was noticed in the said panchanama that the way of respondent No. 3 was obstructed by the present petitioners to enter into his field. The ld. Counsel submitted that, for certain reasons this Court remitted the matter to the ld. Mamlatdar to hear and decide the same afresh and thereafter the Mamlatdar has carried out fresh spot inspection and has also recorded the statements of some witnesses. The ld. Counsel submitted that, in the spot inspection conducted by the Mamlatdar

and the statements recorded of the witnesses, it was specifically revealed that the way of entering into the field of respondent no. 3 has been obstructed by the present petitioners. The ld. Counsel submitted that, the spot inspection was carried out by the ld. Mamlatdar in presence of the present petitioners and they have put their signatures below the Panchanama drawn in that regard. The ld. Counsel submitted that, for technical non-compliances the merit in the dispute raised by respondent no. 3 cannot be lost sight of. The ld. Counsel submitted that, the Tahsildar is cast with certain duties under the provisions which are referred to by the learned counsel appearing for the petitioners from the said Act. The ld. Counsel submitted that, when the complaint made by respondent No. 3 is found to be genuine, that cannot be rejected only on the ground that some compliances are remained to be made or for failure on the part of the Mamlatdar in getting complied the said provisions. The ld. Counsel in the circumstances prayed for dismissal of the writ petition.

7. Shri. A. B. Chate, learned Asst. Government Pleader for respondent/State supported the impugned orders.

8. I have given due consideration to the submissions made by the learned counsel appearing for the respective parties. I have

perused the impugned order and the order passed by this Court in Writ Petition No. 1330 of 2017 and the other material placed on record. Since the provisions of the said Act are referred to by both the parties and have material bearing on this matter, I deem it appropriate to reproduce the said provisions which read thus:

5. Power of Mamlatdar's Courts. (1) Every Mamlatdar shall preside over a Court, which shall be called a Mamlatdar's Court, and which shall, subject to the provisions of sections 6 and 26, have power, within such territorial limits as may from time to time be ⁶[fixed by the State Government,—

(a) to remove or cause to be removed any impediment, erected otherwise than under due authority of law, to the natural flow in a defined channel or otherwise of any surface water naturally rising in or falling on any land used for agriculture, grazing, trees or crops, on to any adjacent land, where such impediment causes or is likely to cause damage to the land used for such purpose or to any such grazing, trees or crops thereon;

(b) to give immediate possession] of any lands or premises used for agriculture or grazing, or trees, or crops or fisheries, or to restore the use of water from any well, tank, canal or water-course, whether natural or artificial used for agricultural purposes to any person who has been dispossessed or deprived thereof otherwise than by due course of law, or who has become entitled to the possession or restoration thereof by reason of the determination of any tenancy or other right of any other person, not being a person who has been a former owner or part-owner, within a period of twelve years before the institution of the suit of the property or use claimed, or who is the legal representative of such former owner or part-owner :

Provided that, if in any case the Mamlatdar considers it inequitable or unduly harsh ⁷[to remove or cause to be removed any such impediment or], to give possession of any such property or to restore any such use to a person who has become entitled thereto merely by reason of the determination of any such tenancy or other right, or if it appears to him that such case can be more suitably dealt with by a Civil Court, he may in his discretion refuse to exercise the power aforesaid, but shall record in writing his reasons for such refusal.

(2) **Power to issue injunction:** The said Court shall also, subject to the same provisions, have power within the said limits, ¹[where any impediment referred to in sub-section (1) is erected, or an attempt

has been made to erect it, or], when any person is otherwise than by due course of law disturbed or obstructed, or when an attempt has been made so to disturb or obstruct any person, in the possession of any lands or premises used for agriculture or grazing or trees or crops or fisheries or in the use of water from any well, tank, canal or water-course, whether natural or artificial used for agricultural purposes or in the use of roads or customary ways thereto, to issue an injunction to the person ²[erecting or who has attempted to erect such impediment, or] causing, or who has attempted to cause, such disturbance or obstruction, requiring him to refrain ³[from erecting or attempting to erect any such impediment or], from causing or attempting to cause any further such disturbance or obstruction.

(3) **Suit to be filed within six months:** No suit shall be entertained by a Mamlatdar's Court unless it is brought within six months from the date on which the cause of action arose.

(4) Cause of action: The cause of action shall be deemed to have arisen on the date on which the ⁴[impediment to the natural flow of surface water or the] dispossession, deprivation or determination, of tenancy or other right occurred, or which the ⁵[impediment,] disturbance or obstruction, or the attempted ⁶[impediment or] disturbance or obstruction, first commenced.

6. Power of Collector to transfer Suits: The Collector may, after due notice to the parties, by order in writing, transfer any suit from any Mamlatdar's Court in his district to any other Mamlatdar's Court in his district, and the Mamlatdar's Court to which the suit is so transferred shall thereupon exercise jurisdiction in such suit; but any order issued to village-officers under section 21 shall be issued by the Mamlatdar to whom such village-officers are subordinate.

7. Suits commenced by plaint: All suits under this Act shall be commenced by a plaint, which shall be presented to the Mamlatdar in open Court by the Plaintiff and which shall contain the following particulars,—

(a) the name, age, religion, caste, profession and place of abode of the Plaintiff;

(b) the name, age, religion, caste, profession and place of abode of the Defendant;

¹[(bb) the nature and situation of the impediment erected and the situation of the lands which are adjacent to each other and the nature of the relief sought;]

(c) the nature and situation of the property of which possession for use is sought or the nature of the injunction to be granted, as the case may be;

- (d) the date on which the cause of action arose ;
- (e) the circumstances out of which the cause of action arose; and
- (f) a list of the Plaintiff's documents, if any, and of his witnesses, if any, showing what evidence is required from each witness, and whether such witnesses are to be summoned to attend or whether the Plaintiff will produce them on the day and at the place to be fixed under section 14.

8. Informal petitions to be treated as complaints: Where a petition not in the form of a complaint is presented to the Mamlatdar and the subject matter thereof appears to fall within the scope of section 5, the Mamlatdar shall explain to the person presenting the petition the nature of the reliefs afforded by this Act and shall inquire whether the Petitioner desires to obtain relief thereby. If the Petitioner expresses a desire so to obtain relief, the Mamlatdar shall endorse the desire on the petition which shall thereupon be deemed to be a complaint presented under section 7.

9. Examination of Plaintiff on oath: Where the complaint does not contain the particulars specified in section 7 or is unnecessarily prolix, the Mamlatdar shall forthwith examine the Plaintiff upon oath and ascertain from him such of the particulars specified in section 7 as are not clearly and correctly stated in the complaint and shall reduce the examination to writing in the form of an endorsement on or annexure to the complaint which shall thereupon be deemed to be part of the complaint. Where the Plaintiff required time to obtain any of the particulars specified in section 7, the Mamlatdar shall grant him such time as may under all the circumstances appear reasonable.

10. Complaint to be subscribed and verified: When the complaint is presented, and has, if necessary, been treated in the manner specified in section 9, the Mamlatdar shall require the Plaintiff to subscribe and verify the complaint in his presence, in open Court, in the manner following, or to the like effect :—

“I, A. B., the Plaintiff, do declare that what is stated in this complaint is true to the best of my information and belief.”

11. Endorsement by Mamlatdar: (1) The Mamlatdar shall endorse the complaint to the effect that it was duly subscribed and verified.

(2) Where the Plaintiff cannot write, the verification may be written for him in open Court and he shall affix his mark to his name in token of the authenticity of the verification, and the Mamlatdar shall, in such case, record that the verification was made in his presence at the request of the Plaintiff, and that his mark was so affixed.

12. Rejection of Complaint : The Mamlatdar shall reject the complaint,—

- (a) where the Plaintiff declines to make a statement on oath under section 9 ; or
- (b) where the Plaintiff is willing to make or has made a statement on oath under section 9, but fails to furnish the particulars specified in section 7 within the time fixed under section 9 or altogether ; or
- (c) where it appears upon the face of the plaint,
 - (i) that the property or use claimed is not one of the kind specified in section 5, or
 - (ii) that the cause of action arose more than six months before the plaint was presented ; or
- (d) where the plaintiff declines to subscribe or verify the plaint as required by sections 10 and 11.

13. Return of Plaintiff : Where it appears to the Mamlatdar that the subject of the plaint is not within his jurisdiction, he shall return the plaint to be presented in the proper Court.

9. It is true that, Section 7 obligates that the suit presented u/s 5 of the said Act shall contain the information on facts as is included in the said Section. In light of the said provisions, when I read the application filed by the present respondent No. 3 with Tahsildar, Ambad on 18.12.2015, it is revealed that the substantial information has been given in the said application. The application contains the names of the persons who are obstructing the way of respondent No. 3. He has also provided the date on which the obstruction was created. He has also described the reason for approaching the Collector i.e. for cause of action. He has also claimed the specific relief that the way to enter into his field may be cleared. Having regard to the aforesaid facts, merely because the same is not

in the form as has been prescribed u/s 7, it would be wholly unjust to discard the said plaint only on the said ground. In so far as verification aspect is concerned, Section 10 casts a duty on the Mamlatdar that he shall get subscribed and verified the plaint in his presence in open court. In the present matter, it appears that the learned Mamlatdar did not follow the said procedure. However, it is to be kept in mind that for failure on part of the Mamlatdar in getting complied certain formalities from the applicant, the merit in the complaint made by the person approaching the Mamlatdar u/s 5 cannot be undervalued.

10. In the present matter, after having perused the entire material, it is revealed that the complaint which was made by respondent No. 3 was found to be genuine. Twice the spot inspection was conducted and the panchanamas in that regard were prepared. At both the times, it was revealed that the way being used by respondent no. 3 to enter into his field was obstructed by the present petitioners. The panchanamas were prepared on both the occasions in presence of the present petitioners. The statements recorded of the witnesses by the Mamlatdar reveal the fact that the complaint made by respondent no. 3 was containing truth and in the circumstances the Mamlatdar had passed an order previously on 29.12.2016 thereby directing

present petitioners to clear the way. Nothing has been pointed out or no such material is placed on record to show that the complaint was absolutely false or that the evidence which was adduced was concocted or that the finding recorded by Mamlatdar in his impugned order is contrary to the evidence recorded so as to treat it as a perverse finding.

11. Though it was vehemently argued by the learned counsel for the petitioners that the order passed by the ld. Mamlatdar on 16.11.2017 is liable to set aside on the sole ground that the Mamlatdar has confirmed the order earlier passed by him on 29.12.2016, which was set aside by this Court vide order passed in Writ Petition No. 1330 of 2017, the contention so raised is liable to be rejected. This Court has not set aside the order dt. 29.12.2016 on merits. It was set aside for giving the opportunity to the petitioners therein, who are the petitioners in the present petition, to appear before the ld. Mamlatdar and to adduce evidence, if any, from their side. In the circumstances, if the ld. Mamlatdar has, after having considered the evidence on record, passed an order confirming his previous order, nothing wrong can be said to have committed by him. It is, however, true that some mistakes have occurred in following the procedure laid down in the relevant provisions of the said Act which

are referred to herein above. It, however, does not appear to me, that the alleged non-compliances were of substantial nature so as to negate the entire case of respondent no. 3. I reiterate that, upon going through the order passed by the Mamlatdar, it is noticed that the Mamlatdar found that respondent No. 3 succeeded in establishing existence of access way to his field passing from along the boundary of the land of the petitioners and making of obstruction to its user by the present petitioners and, therefore, allowed the application filed by respondent no. 3. The order passed by the Mamlatdar is well reasoned and based upon the proper appreciation of evidence on record. In the circumstances, to set aside the said order on the ground that the procedure as prescribed in sections 5 to 13 of the Mamlatdars' Courts Act has not been followed in the manner prescribed in the said sections would lead to miscarriage of justice. I, therefore, do not see any reason to cause interference in the impugned order. The Writ Petition therefore fails and is accordingly dismissed. Rule is discharged.

[P. R. BORA]
JUDGE

