

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

WRIT PETITION NO.4245 OF 2018

Bhalchandra s/o Gorakh Patil .. Petitioner

Versus

The State of Maharashtra & Others .. Respondents

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Advocate for Petitioner : Shri V.D. Salunke h/f. Shri M.V. Salunke

AGP for Respondents No.1 to 3 : Ms P.V. Diggikar

Advocate for Respondent No.4 : Shri V.B. Anjanwatikar

Respondents No.5 to 8 : Served.

Advocate for Respondent No.9 : Shri N.N. Jagdale (absent)

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CORAM : P.R. BORA, J.

Dated: JUNE 7, 2019

PER COURT :

1. The present writ petition is filed challenging the order passed by Tahsildar, Dhule on 22.02.2017 in Wahiwat Suit No.25 of 2015, which has been confirmed by Sub-Divisional Officer, Dhule vide order dated 30.10.2017 passed in RTS Appeal No.45 of 2017.

2. The present respondent no.4 namely Vijay Ravan Patil had preferred an application before Tahsildar, Dhule contending therein that, he is having right of way to enter into his field Gat No.98/1-2 from the field Gat No.93/2C owned and

possessed by one Narendra Gorakh Patil. The application so preferred by said Vijay Patil was entertained by Tahsildar as an appeal filed by him under Section 5 of The Mamlatdar's Courts Act, 1906 and was numbered as Wahiwat Suit No.25 of 2015 and the further enquiry was carried out. The learned Tahsildar vide the impugned decision dated 22.02.2017 allowed the application filed by respondent no.4 by passing an order providing him the right of way to enter into his field from the southern side bandh of the land Gat No.93 and further from the western side bandh of Gat No.100 and further directed the owners of the said lands not to restrain said Vijay Ravan Patil from entering into his field from the said portions and further direction was also given to clear the way by removing the obstructions. The said order was challenged by the sole respondent in that suit namely Narendra Gorakh Patil before the Sub-Divisional Officer by filing RTS Appeal No.45 of 2017, however, the learned Sub Divisional Officer vide order passed on 30.10.2017 has dismissed the said appeal. Aggrieved by, the present petition has been filed.

3. Shri V.D. Salunke learned Counsel appearing for the petitioner raised certain serious objections against the orders passed by the revenue Courts below and more particularly as about the procedures adopted by the said Courts. The learned Counsel submitted that, the petitioner was neither party to the suit filed before the Tahsildar nor in the RTS appeal filed before the Sub-Divisional Officer. However, since the order has affected the rights of the petitioner and the way seems to have been given vide the aforesaid orders through the agriculture land bearing Gat No.93/2C, which is owned and possessed by the present petitioner, the petitioner is constrained to prefer the present writ petition. The learned Counsel submitted that, a simple application was submitted by respondent no.4 Vijay Patil before the Tahsildar, Dhule alleging that, his right of way to enter into his field was closed by Narendra Gorakh Patil and some others, whose names are mentioned in the said application and a request was made to give him the way as earlier it was enjoyed by him.

4. The learned counsel for the petitioner invited my attention to the provisions under The Mamlatdar's Courts Act, ggp

more particularly, the provisions under Sections 5 and 12 of the said Act. The learned counsel relying upon the Judgment of this Court in Civil Revision Application No.187 of 2009 decided on 16.11.2010 (**Coram : K.U. Chandiwal, J.**) submitted that, the application submitted by respondent no.4 on 19.06.2015 was liable to be rejected and could not have been entertained by the Mamlatdar for the reasons recorded in the judgment cited supra. The learned Counsel was persuasive in submitting that, invariably such wrong procedure is being followed by the Tahsildars in utter violation of the procedure laid down for conducting such matters as provided under The Mamlatdar's Courts Act and as such, the said practice needs to be deprecated and the guidelines required to be issued for adherence of the procedure and not to entertain the applications arbitrarily, wherein basic requirements are also not complied with.

5. It was also contended by Shri Salunke that, the application was admittedly addressed to Tahsildar. The learned counsel pointed out that, if it was the intention of the applicant to file a suit under the provisions of the Mamlatdars Courts Act,

it should have been presented by him as provided under Section 5 of the said Act in the open Court before the Mamlatdar. When no such procedure was followed and the application was addressed to Tahsildar, the different procedure was liable to be followed as prescribed under Section 143 of the Maharashtra Land Revenue Code.

6. The learned counsel appearing for respondent no.4 i.e. original applicant has resisted the submissions made on behalf of the petitioner. The learned counsel contended that, no more importance can be given to the form of the application and the provisions as are made in the Mamlatdar's Courts Act are to be read in their real spirit. The learned counsel submitted that, merely because certain procedural lapses had occurred, when from the record, it appears that, the applicant had succeeded in proving that, his way of entering into field was closed by the opponents, no fault can be found in the order passed by the Tahsildar, which has been confirmed by the learned Sub Divisional Officer.

7. I have given due consideration to the submissions made by the learned Counsel appearing for the respective parties. I have perused the impugned orders as well as the record received from the office of the Tahsildar pertaining to the Wahiwat Suit No.25 of 2015.

8. On perusal of the record of the Trial Court, it is revealed that, an application on plain paper was filed by respondent no.4 namely Vijay Ravan Patil making a complaint that, way to enter into his field was closed by the persons mentioned in the said application and further request was made to make the said way open by restraining the said persons from closing the said way again.

9. Similar situation was there in Civil Revision Application No.187 of 2009 decided by this Court on 16.11.2010. The Court, by analysing the provisions under Sections 7, 8, 9 and 12 of the Mamlatdar's Courts Act, set aside the order of the Tahsildar, which was impugned in the said petition and which was also confirmed by the Sub Divisional

Officer, for non-compliance of the mandatory requirements as are envisaged in the aforesaid provisions of the Mamlatdar's Courts Act. In the present matter, if the original application is perused, all material particulars are absent. Even the names of opponents are not specifically mentioned. No necessary particulars pertaining to the applicant as well as the opponents are provided. The numbers of the concerned lands are also not given. It is more particularly seen that, in the RTS appeal, the land Gat No.93/2C was shown to be the subject matter in the said appeal. The said land Gat No.93/2C is admittedly owned by the present petitioner. The petitioner was admittedly not made party to the said RTS appeal, nor to the suit which was decided by the Mamlatdar. It is evident that, neither the Tahsildar nor the S.D.O. bother to see, whether the owner of Gat No.93/2C is made party to the said proceedings before them and whether he has been given any opportunity to put forth his case as about the allegations made by respondent no.4 in the said application.

10. Section 3 of the Mamlatdar's Courts Act says that, no

suit shall be entertained by the Mamlatdar's Court unless it is brought within six months from the date on which the cause of action arose. If the application filed by respondent no.4 on 19.06.2015 is perused, it is nowhere mentioned in the said application as to since when his right of way has been closed by the persons named by him in the application. The Tahsildar has assumed the said application to have been filed within the period of six months though in the application minimum particulars in that regard are also not provided.

11. Section 7 of the Mamlatdar's Courts Act prescribes that, all the suits under the 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 ;

(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.”

The application filed by the present respondent no.4 on 19.06.2015, does not contain the particulars as above.

12. Section 9 provides that, where the plaint 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 plaint and shall reduce the examination to writing in the form of an endorsement on or annexure to the plaint, which shall thereupon be deemed to be part of the plaint.

13. I have carefully gone through the record of the Mamlatdar's Court. The record does not reveal that, procedure prescribed under Section 9 of the Act has been followed by the learned Mamlatdar. There are certain other discrepancies as

regards to the compliance of Section 10 and 11 of the Mamlatdar's Courts Act, however, it appears to me that, basic requirements for entertaining the application filed by respondent no.4 as a suit under Section 25 of the Mamlatdar's Courts Act when were absent, the Mamlatdar was not having any right or authority to entertain and deal with the said application. In the circumstances, in no case the order passed by the Mamlatdar can be sustained and deserves to be set aside. It is accordingly set aside. Consequently, the order passed by the learned Sub Divisional Officer in RTS Appeal No.45 of 2017 also stands set aside. Respondent no.4 is, however, not precluded from ventilating his grievance by adhering to the proper procedure.

14. Before concluding the order, I deem it appropriate to caution the Revenue Authorities to be more careful in hearing and deciding the matters brought before them. Though they are not supposed to be too technical and reject the applications, suits, revisions or appeals on technical grounds, they have to ensure that, the requirements prescribed in statute are ordinarily followed and adhere to. For example, the Mamlatdar's Courts
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Act, 1906 when prescribes a complete procedure for filing the suit under Section 25 of the said Act, it has to be followed in letter and spirit and if the same is not followed and the casual applications are made, such suits shall not be entertained.

(**PR. BORA, J.**)