

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 5896 OF 2018

Sudhir Yashwant Dhangade

....Petitioner

V/s.

Ankush Kashiram Bole & Ors.

....Respondents

Mr. Bakul Bhosale for the petitioner.

Mr. V.S. Tadake for respondent no.1.

Mr. A.B. Kadam, AGP for respondent nos.2 and 3.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 03RD JANUARY, 2019.

JUDGMENT :-

. Rule. Rule made returnable forthwith. With consent, matter is taken up for final hearing.

2. By this petition, the petitioner has challenged the order dated 16/06/2017 and 02/01/2018 passed by the learned Tehsildar, Chiplun and learned Additional Collector, Ratnagiri respectively.

3. The respondent no.1 claim to be in possession of land under Gat No.79 which is situated towards western side of Gat No.68. The respondent claim that he has been using a passage passing through Gat

No.68 and that the petitioner had obstructed the same by enclosing the Gat No.68 with a compound wall. The respondent no.1 therefore filed an application under Section 5 of Mamlatdars Courts Act, 1906 seeking directions against the petitioner to remove obstructions over the passage in Gat No.68 of Post Kamathe, Chiplun, Dist. Ratnagiri and to restrain him from obstructing use of the said passage.

4. The learned Mamlatdar examined the respondent no.1 and his witnesses and by order dated 16/06/2017 allowed the application and directed the petitioner to remove the obstructions from the passage in Gat No.68 and further restrained him from creating any such obstruction and/or preventing the respondent no.1 from using the said passage. The petitioner challenged the said order before the Additional Collector, Ratnagiri. The Additional Collector dismissed the said revision application by order dated 02/01/2018. Being aggrieved, the petitioner has filed the present Writ Petition.

5. Mr. Bakul Bhosale, learned counsel for the petitioner submits that the petitioner was not given an opportunity to cross examine the respondent and his witnesses and/or to adduce his evidence. He submits that the impugned order is in breach of the principles of

natural justice.

6. Mr. V.S. Tadake, learned counsel for respondent no.1 submits that the petitioner had neither applied before the Mamlatdar for leave to cross examination nor had he raised this ground before the Additional Collector, Ratnagiri. Having failed to do so, the petitioner cannot raise it as a ground of challenge. The learned counsel for the respondent no.1 further submits that the petitioner has already filed a civil suit and the rights of the parties will be finally adjudicated in the said suit. In the circumstances, the impugned cannot be interfered with in the writ jurisdiction.

7. The short point, which falls for determination, is whether the impugned order is vitiated for breach of principles of natural justice.

8. It is to be noted that section 5 of the Mamlatdar's Court Act confers powers on the Mamlatdar to address the grievances and give quick relief to agriculturists in relation to the land used for agriculture.

Sub-section 1 of Section 5 reads thus :-

“ 5. Powers 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

[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 [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. ”

9. Sub-section 2 of Section 5 confers powers on the Mamlatdar to issue injunction. Sub-section 3 prescribes the period of limitation for filing of the suit under Section 5 of the Act and sub-section 4 of Section 5 relates to the cause of action. Sections 14 to 19 prescribe procedure to be followed by the Mamlatdar when the plaint is admitted. Sections 15, 16 and 19 of the Act confer specific powers on the Mamlatdar to

summon and examine witnesses, to inspect the property in dispute and to record his findings on the issues raised in the plaint.

10. It is thus evident that the Act specifically confers powers on the Mamlatdar to record evidence. Hence, the Court presided over by the Mamlatdar, would be a 'Court' within the meaning of Section 3 of the Indian Evidence Act and provisions of Section 135, 136, 137 and 138 of the Indian Evidence Act would be applicable to the proceedings under Section 5 of Mamlatdars Court Act.

11. In the instant case, the records reveal that the Mamlatdar has recorded statements of the respondent no.1 and his witnesses. In view of applicability of the provisions of Section 135, 136, 137 and 138 of the Indian Evidence Act to the proceedings under Section 5 of the Mamlatdars Court Act, the petitioner had right to cross examine the respondent no.1 and his witnesses. The records reveal that the learned Mamlatdar had not given an opportunity to the petitioner to cross examine the respondent no.1 and his witnesses. Suffice it to say, right of cross examination being legal right, the petitioner was not required to file any application but it was the obligation of the statutory authority recording the evidence to afford such opportunity. In the

instant case, no such opportunity was given.

12. It is well settled that no evidence affecting a party is admissible against that party unless the latter has had an opportunity of testing its truthfulness by cross examination. Under the circumstances, the learned Mamlatdar was not justified in placing reliance on the evidence of the respondent no.1 and his witnesses without giving any opportunity of cross examination. The order passed by the learned Mamlatdar is in breach of principles of natural justice.

13. The issue raised in the petition being a pure question of law, which is not dependent on the determination of any question of fact and can be allowed to be raised at any stage of the litigation. Hence, the fact that the petitioner had not raised this ground before the learned Additional Collector would not prevent him from raising the said ground in this Writ Petition.

14. Under the circumstances and in view of discussion supra, the impugned orders cannot be sustained. Hence, the following order :-

(i) The petition is allowed.

(ii) The impugned orders dated 16/06/2017 and 02/01/2018 are quashed and set aside.

(iii) The matter is remanded to the Mamlatdar with directions to give opportunity to the petitioner to cross examine the respondent no.1 and the witnesses examined and further to permit him to adduce his evidence.

(iv) The learned Mamlatdar to decide the matter afresh on its own merits in accordance with law.

(v) Parties are directed to appear before the Mamlatdar on 10/01/2019.

15. Rule is made absolute in the above terms.

(SMT. ANUJA PRABHUDESSAI, J.)