

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

**WRIT PETITION NO. 10826 OF 2018**

Anjana Baban Jadhav & Ors.

....Petitioners

V/s.

Bapuso Tukaram Patil & Ors.

....Respondents

Mr. Mahindra B. Deshmukh for the petitioners.

Mr. Nagesh Y. Chavan for respondent nos.1 to 5 and 7 to 9.

Mr. P.P. Pujari, AGP for respondent nos.11 and 12.

**CORAM: SMT. ANUJA PRABHUDESSAI, J.**

**DATED : 21<sup>st</sup> JANUARY, 2019.**

**P.C.:**

. With consent, petition is taken up for final hearing at the stage of admission.

2. The petitioner herein has challenged the order dated 17/06/2017 passed by the respondent no.11 – Tahasildar, Vita, Dist. Sangli under the provisions of Section 5 of Mamlatdar's Court Act, 1906.

3. Heard Mr. Mahindra B. Deshmukh, learned counsel for the petitioners, Mr. Nagesh Y. Chavan, learned counsel for respondent nos.1 to 5 and 7 to 9 and Mr. P.P. Pujari, learned AGP for respondent nos.11 and 12. I have perused the records and considered the

submissions advanced by the learned counsels for the respective parties.

4. The respondents herein had filed an application under Section 5 of the Mamlatdar's Court Act contending that they have been using the road passing through Gat No.680, 703 and 705 of village Palshi to go to their agricultural property. The respondents therefore sought directions against the petitioners to remove the obstruction over the said road and further sought to restrain them from obstructing the user of the said road.

5. The grievance of the respondents was that the petitioners had blocked the said road by putting sticks, stones, etc. The petitioners had contested the said proceedings on the ground that no road was passing through their property under Survey No.680, 703 and 705. They had stated that the respondents herein have alternative road.

6. The Tahasildar visited the site and conducted the panchanama. He recorded that there was no road at loco as per the village map. The learned Tahasildar, thereafter, by the impugned order dated 17/06/2017 allowed the application and “ granted road as per the

sketch ”. The Revision Application filed by the petitioners against the said order has been dismissed by order dated 05/06/2018. Being aggrieved by these two orders, the petitioners have filed this Writ Petition.

7. 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. Section 5 enables the Mamlatdar to remove or cause to be removed any impediment which is likely to cause damage to the land used for agricultural purpose. Section 14 to 19 prescribe procedure to be followed by the Mamlatdar when the plaint under Section 5 is admitted. Sections 14 and 15 of the Act confer specific powers on the Mamlatdar to summon and examine witnesses.

8. It is thus evident that the Act specifically confer 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 consequently, provisions of Section 135, 136, 137 and 138 of the Indian Evidence Act would be applicable to the proceedings under Section 5 of Mamlatdar's Court Act.

9. It is also pertinent to note that sub-section 1 of Section 19 enumerates points which the Mamlatdar is required to consider at the time of hearing. Whereas sub-section 2 of Section 19 empowers the Mamlatdar to inspect the property in dispute and to summon and examine any person who has not been examined as a witness. Sub Section 4 of Section 19 provides that where the findings upon the issue is in favour of the Plaintiff, the Mamlatdar shall make such order as per the powers vested under Section 5 of the Act and where the finding is in favour of the Defendant, he shall dismiss the suit. In short, the Mamlatdar has to record the evidence and record his finding on the issues and decide the application based on the findings upon the issues.

10. In the instant case, though the learned Tahasildar had recorded the statements of the parties to the proceedings, he had not afforded opportunity of cross examination to either party. The Tahasildar had also not allowed the application based on the evidence adduced by the parties or on the findings recorded on the issues. In fact, the learned Tahasildar has not recorded any finding as regards existence of the road or obstruction of the road. The records indicate that the Tahasildar had inspected the property and observed that there was no road at loco, as shown in the map. The learned Tahasildar has

exercised powers under Section 5 of the Act to provide road as delineated in the map. Suffice it to say that the provisions under the Mamlatdar Courts Act do not authorize the Mamlatdar to provide a new road.

11. The impugned order is passed in contravention of the procedure prescribed under the Act. Furthermore, the impugned order is in excess of powers vested in the Tahasildar by Section 5 of the Act. The learned SDO has dismissed the revision application cursorily without considering the grounds raised by the Petitioners herein. The impugned orders are ex facie, perverse and illegal hence cannot be sustained. Hence, the following order :-

(i) The petition is allowed.

(ii) The impugned order dated 17/06/2017 passed by the Tahasildar, Khanapur, Vita and 05/06/2018 passed by the Sub-Divisional Officer, Taluka Khanapur, Sangli are quashed and set aside.

(iii) The matter is remanded to the Tahasildar to decide the matter afresh in accordance with the procedure prescribed under the Act.

(iv) Parties are directed to appear before the Tahasildar on 11/02/2019 at 11:00 a.m.

(v) The learned Tahasildar shall dispose of the application as expeditiously as possible in any event within a period of three months from the date of receipt of this order.

12. Rule is made absolute in the above terms.

**(SMT. ANUJA PRABHUDESSAI, J.)**