

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4870 OF 2020

Chandrashekhar Uttam Danve

Age : 41 years, Occ : Agri.,

R/o Javkheda (Khurd), Tq. Bhokardan,

Dist. Jalna.

..PETITIONER

VERSUS

1. The State of Maharashtra
Through, Secretary Revenue
and Forest Department, Mantralaya,
Mumbai-32.
2. Additional Collector, Jalna.
3. Tahsildar Bhokardan,
Dist. Jalna.
4. Circle Inspector Rajur,
Tq. Bhokardan
5. Talathi Mauje,
Javkheda (Khurd),
Tq. Bhokardan, Dist. Jalna.
6. Vijayabai Vitthal Danve
Age : 60 years, Occ : Farmer,
R/o Javkheda (Khurd),
Tq. Bhokardan, Dist. Jalna.
7. Vitthal S/o Bhaurao Danve
Age : 66 years, Occ : Farmer,
R/o Javkheda (Khurd), Tq. Bhokardan,
Dist. Jalna. ..RESPONDENTS

...

Mr.C.V. Thombre, Advocate for the petitioner.

Mr.P.K. Lakhotiya, AGP for respondent nos.1 to 5.

Mr.D.R. Jethliya, Advocate for respondent nos.6 & 7.

CORAM : V.L.ACHLIYA,J.
DATE : 16.07.2020

ORAL JUDGMENT :

Rule. Rule returnable forthwith.
With the consent of learned counsel for the petitioner and learned counsel for the respondents, the Petition is heard finally at the stage of admission.

2. The petitioner has preferred this Petition under Article 226 and 227 of the Constitution of India seeking the following reliefs :-

“(B) By issuing appropriate writ or order the respondent No.2 may kindly be directed to decide case No.2019/RB/Appeal/CR-58 within specific period.

(C) By issuing appropriate writ or order the impugned order dated 27/05/2019 and 03/06/2019 passed by respondent Nos.2 and 3 and notice

dated 22/06/2020 issued by respondent No.4 for executing the order dated 27/05/2019 may kindly be quashed and set aside."

3. In brief, it is the contention of learned counsel for the petitioner that the impugned orders passed by the respondent nos.2 and 3 are not sustainable in law as same are passed in complete disregard to the provisions of the Mamlatdar's Courts Act, 1906 (Hereinafter referred to as "the said Act"). It is submitted that acting on the simple application moved by the respondent no.6, the respondent no.3 has passed the impugned order dated 27.05.2019 without affording opportunity of hearing and conducting the inquiry as contemplated under the provisions of the said Act. The interim relief has been granted in the nature of final relief without any inquiry and opportunity of hearing to the petitioner.

4. By referring to section 7 of the said Act, learned counsel submits that nature of the proceedings to be filed under the Mamlatdar's Courts Act are in the nature of suit and commenced by presentation of plaint. The plaint to be filed 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.

5. Learned counsel invited attention to the application presented by the respondent no.6 to the respondent no.3 seeking removal of impediment and submit

that no particulars as mandatorily required U/Sec. 7 of the Mamlatdar's Courts Act provided in plaint/application filed by petitioner. It is submitted that once the plaint is presented, it is incumbent upon the Mamlatdar to examine the plaint and ensure that it contains the requisite particulars including the cause of action. The proceeding to be initiated must be filed within statutory period of limitation as provided under law. However, in the instant case no such exercise as provided under the law has been made on the part of respondent no.3.

6. Being aggrieved by order dated 27.05.2019, the petitioner preferred revision petition U/Sec. 23(2) of the said Act and challenged the *exparte* order dated 27.05.2019 passed by the respondent no.3. Without application of mind, the

respondent no.2 has passed the impugned order dated 03.06.2019 and refused to grant stay to the impugned order. It is submitted that the impugned order has been passed arbitrarily. Although the period of more than one year has lapsed, the respondent no.2 has failed to decide the revision petition. Now the respondent no.3 has issued notice and called upon the petitioner to implement the order. It is submitted that the orders passed are arbitrary and in gross abuse of process of law. In support of the submissions advanced, learned counsel has referred and relied upon the judgments of this Court in the case of *Gaurakshan Sansthan, Murtizapur V/s State of Maharashtra and others* reported in *2019(6) Mh.L.J. 473*, *Jayant Namdeorao Gohad V/s Prakash Manikrao Vighe and others* reported in *2012(1) All M.R. 220* and *Union of India*

and others V/s Maruti Madhav Kerulkar and others, reported in ***2002(4) Mh.L.J. 73.***

7. On the other hand, learned counsel for respondent nos.6 and 7 supported the orders passed by the respondent nos.2 and 3. It is submitted that the petition liable to be dismissed solely on the ground that the same has been filed after a period of more than one year of passing of orders by the respondent nos.2 and 3. So also the orders impugned are interim in nature and the revision petition filed by the petitioner is pending before the respondent no.2 and the same can be decided on merit.

8. So far as the submissions advanced that the plaint filed by petitioner lacks in material particulars as required U/Sec. 7 of the said Act, the learned counsel submits that the defects are curable in nature and can be rectified. In this context, learned

counsel invited attention to section 8 of the said Act and submits that even formal petition can be treated as plaint if it discloses the subject matter in the nature of reliefs to be granted falls within the scope of section 5 of the Mamlatdar's Courts Act. The Mamlatdar can inquire as to the reliefs to be claimed by the petitioner and on inquiry if satisfied that the reliefs claimed are in the nature of reliefs falls within the scope of section 5 then he can endorse the desire of such person on the Petition and proceed to treat the same as plaint presented U/Sec. 7 of the Mamlatdar's Courts Act.

9. Learned counsel further submits that section 9 provides that even if plaint lacks the particulars as contemplated U/Sec. 7 still the Mamlatdar can examine the plaintiff on oath and ascertain the requisite particulars as specified in section 7 of the

said Act. It is submitted that the respondent no.6 is a poor, illiterate woman having no much knowledge of the procedure prescribed under the law. She approached the respondent no.3 by way of application seeking redressal of grievance. The grievance agitated in the application presented squarely falls within the ambit of reliefs to be claimed U/Sec 5 of the Mamlatdar Act. On satisfaction that the respondent no.6 is seeking relief within the ambit of section 5 of the Mamlatdar's Courts Act, the respondent no.3 called the report from the Circle Officer and based upon the report of spot inspection made by the Circle Officer the respondent no.3 has passed the order dated 27.05.2019. The order passed by learned Tahsildar is an interim order. The proceeding is yet to be decided on merit. The petitioner has challenged said interim order before the respondent no.2 by filing revision petition. Considering the overall facts of

the case and sowing season in operation, the respondent no.2 refused to stay the order passed by the respondent no.3 and no illegality committed on the part of the respondent nos.2 and 3 in passing the impugned orders. It is submitted that the orders passed are legal, proper and well within the scope of exercise of powers vested with the respondent nos.2 and 3. No case has been made out to invoke the inherent jurisdiction of this Court to interfere with the orders passed.

10. On due consideration of submissions advanced, I am of the view that the orders passed deserves no interference in exercise of writ jurisdiction of this Court. Both the orders under-challenged are interim orders. The orders passed are well within the scope of exercise of powers vested with the respondent nos.2 and 3 under the provisions

of Mamlatdar's Courts Act. Report of the Circle Officer clearly indicates that the way to approach the field of the respondent no.6 was obstructed by petitioner using JCB machine. In that view, the interim order passed by the respondent no.3 to clear the impediment created in approach road of respondent no.6 can not said to be illegal. The order passed by the revisional authority to refuse to stay the order passed by the learned Tahsildar also not suffers from any defects, illegality or jurisdictional error so as to call for interference in exercise of writ jurisdiction of this Court. Since the orders are interim in nature, it is not desirable for this Court to deal with the contentions of the petitioner on merit.

11. In the facts and circumstances of the case that the revision petition filed by the petitioner is pending for consideration

before the respondent no.2, the Petition can be conveniently disposed of by directing the respondent no.2 to decide the same in expeditious and time bound manner. Accordingly, the Petition is partly allowed and disposed of in terms of prayer clause "B". The Respondent no.2 is directed to hear and decide the revision petition as expeditiously as possible and preferably within three months from the date of passing of this order.

12. It is expressly made clear that this Court has not dealt the merit of the case of the petitioner as well as respondent. All the contentions raised by the petitioner as well as the respondent nos.6 and 7 are kept open to be raised before the appropriate authority. None of the observations made in the order to be construed as observations made as to the merit of the case.

13. Rule is made absolute in above terms.

[V.L.ACHLIYA]
JUDGE

SGA