

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

WRIT PETITION NO. 2358 OF 2016

Bhaskar Shankar Gaikwad	..Petitioner
V/s.	
Shivaji Anandrao Jadhav & Ors.	..Respondents

Mr.M.B. Deshmukh for the Petitioner.

Mr.V.S. Gokhale for Respondent Nos.1 to 8.

Ms.M.S. Bane, AGP for Respondent No.9-State.

CORAM : C.V. BHADANG, J.

DATE : 9th JANUARY 2020

P.C.

1. The challenge in this petition is to the order dated 15th July 2015 passed by the respondent No.10 who is the Revisional Authority in Revision Application No.13 of 2014 by which the Revisional Authority has confirmed the order dated 19th November 2014 in case No.11 of 2013 passed by the learned Mamlatdar under Section 5 of the Mamlatdar Courts Act ('Act' for short).

2. The learned Mamlatdar by the impugned order has directed the petitioner to remove the obstruction in the way of the

respondent Nos.1 to 8 for approaching their lands at Village-Salshinge.

3. The respondent Nos.1 to 8 had approached the Mamlatdar claiming that they have got right of way to access their fields situated at Village-Salshinge, Taluka-Khanapur, District-Sangli as set out in the said application and the said road is passing through Gat No.561 of the petitioner. The Mamlatdar after recording the evidence of the parties has allowed the application which order has been confirmed by the Revisional Authority.

4. I have heard the learned counsel for the parties. Perused record.

5. It is submitted by learned counsel for the petitioner that there are three requirements before a Mamlatdar can grant relief under Section 5 of the said Act namely:-

- (i) Existence of a customary road, used by the applicants;
- (ii) The fact that such a customary road is obstructed and;

(iii) That the persons aggrieved approach the Mamlatdar, within six months.

6. It is submitted that neither of these three requirements, are satisfied in this case. The learned counsel has pointed out that there is inconsistency in the case, made out in the application and the panchnamma drawn by the Mamlatdar. It is submitted that Mamlatdar has also not followed the procedure as laid down under the said Act for holding the enquiry and there is breach of principles of natural justice, inasmuch as no opportunity of cross-examination was granted to the petitioner. He therefore, submits that the impugned order is not sustainable and deserves to be set aside.

7. On behalf of the petitioner reliance is placed on the decision of this Court in the case of ***Vishnu Sukhdev Ghanvat & Ors V/s. Collector, Ahmednagar & Ors.***¹ and ***Sudhir Yashwant Dhangade V/s. Ankush Kashiram Bole & Ors.***².

8. Mr.V.S. Gokhale, for respondent Nos.1 to 8 has supported the impugned order. It is submitted that there are concurrent findings of fact recorded by the Courts below, which do

1 2017(1) Mh.L.J. 811

2 2019 DGLS (Bom.) 176

not require interference in the exercise of the supervisory jurisdiction of this Court. The learned counsel pointed out that the petitioners had not filed any reply to the application and as such there was no contest on facts. It is submitted that the existence of the road or its obstruction were not at all disputed by filing any reply.

9. The learned counsel as then referred to the statement of the petitioner recorded by the Mamlatdar in which the petitioner had expressed willingness to allow the user of the road through his Gat No.561 on the condition that the said road is extended till his house. It is thus submitted that there was absolutely no contest on behalf of the respondent.

10. On behalf of the respondents reliance is placed on the decision of this Court in the case of ***Vishwanath S/o. Rambhaji Bhalerao & Anr. V/s. Usha W/o. Pralhad Kasbe***³. In order to submit that the finding recorded by the authorities under the said Act are on the basis of *prima facie* assessment of the evidence and any such finding recorded, is subject to the decision of a Competent Civil Court. It is submitted that the petitioner instead of availing of that

3 2010(5)-ALL MR 77

remedy has challenged the said order before this Court and in the limited scope available for interference the petition cannot be favourably entertained.

11. I have carefully considered the rival submissions made and I do not find that any case for interference is made out.

12. At the outset it is necessary to note that the petitioner for reasons best known to him, did not file any reply to the application filed by the respondent Nos.1 to 8 and thus the case made out by the petitioner, has practically gone uncontraverted. Cross-examination of the witnesses pre-supposes that there is a reply filed contesting the case on facts, which is lacking in this case. That apart a bare perusal of the statement of the petitioner recorded by the Mamaltdar shows that the petitioner had not even objected to the said road passing through the boundary (Surbandha) of his Gat No.561.

13. It is now well settled that strict rules of pleadings do not apply to the proceedings before the Mamaltdar under the said Act and the finding recorded in any such proceedings is subject to the decision of the Competent Civil Court. None of the contentions

which are sought to be raised about absences of the road, as to the absence of averments as to the obstruction of the road, were raised before the Mamaltdar. The panchnamma drawn by the Mamaltdar clearly establishes such obstruction. Even the issue of limitation was never raised. Assuming that the issue of limitation can be raised at any stage of the proceedings, again there is nothing on record to show that the application was filed beyond the period of six months from the date of obstruction.

14. The decision in the case of *Vishnu Sukhdev Ghanvat & Ors.* (Supra) turned on its own facts and cannot come to the aid of the petitioners. Even in the case of *Sudhir Yashwant Dhangade (Supra)* there was a specific contest and therefore it was held that the absences of the cross-examination vitiated the proceedings. In the present case as noticed earlier the statement of the petitioner is of pivotal importance in which he has not disputed the grant of the road through the boundary of Gat No.561 albeit subject to the condition that the road is further extended till his house. The issue in the present case before the Mamaltdar was not whether the petitioner is entitled to the extension of the road till his house.

15. I have carefully gone through the impugned order passed by the Mamaltdar and I do not find that it suffers from any infirmity so as to require interference. The petition is without any merit and is accordingly dismissed, with no order as to costs. Needless to mention that the observations and the findings recorded herein shall not bind the Competent Civil Court, in the event the petitioner takes recourse to the remedy before the Civil Court.

C.V. BHADANG, J.

**Nilam
Kamble**

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Nilam Kamble
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