

Mahindra United World College of India Vs. Vinayak Vidaru Dongre and others	...	Petitioner Respondents
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Mr. S. R. Nargolkar a/w. Mr. Arjun Kadam i/b. Mr. R. R. Sonawane for
Petitioner.
Mr. A. V. Anturkar, Senior Advocate i/b. Mr. R. C. Barge for Respondent No.2.
Mrs. V. S. Nimbalkar, AGP for Respondent Nos.3 and 4-State.

CORAM : UJJAL BHUYAN, J.
Reserved on : JANUARY 08, 2020
Pronounced on : JUNE 09, 2020

Heard Mr. Nargolkar, learned counsel for the petitioner; Mr. A. V. Anturkar, learned senior counsel instructed by Mr. R. C. Barge, learned counsel for respondent No.2; and Mrs. Nimbalkar, learned AGP for respondent Nos.3 and 4-State.

2. By filing this petition under Article 226 of the Constitution of India, petitioner has assailed legality and validity of the order dated 31.05.2018 passed by the Tahsildar, Mulshi, Pune i.e., respondent No.3 in Case No.Rasta/Khubawali/SR/21/2017 as well as the order dated 27.09.2019 passed by the Sub-Divisional Officer, Maval Mulshi, Sub-Division Pune in Revision Application No.RTS/A/SR/422/2018.

3. Be it stated that by the first order dated 31.05.2018, respondent No.3 had allowed the suit instituted by respondent Nos.1 and 2 as the plaintiffs under Section 5(2) of the Mamlatdars' Courts Act, 1906 wherein petitioner was the defendant by giving permanent directions that defendant should not obstruct the

plaintiffs from accessing land and transport farming equipments to and from the plaintiffs' land bearing Survey No.129/1 at Mauje Khubawali, Taluka Mulshi, District Pune.

4. By the second order dated 27.09.2019, revision application filed by the defendant i.e., petitioner herein against the above order dated 31.05.2018 was dismissed by the Sub-Divisional Officer, Maval Mulshi, Sub-Division Pune i.e., respondent No.4.

5. It appears that respondent No.1 wrote a letter dated 07.12.2016 to the petitioner stating that his land was at Khubawali. For cleaning and working on the land i.e., levelling, JCB would be required. So a request was made that petitioner should give permission to respondent No.1 to take JCB through the land of the petitioner. Respondent No.1 admitted that he had removed the barbed wire from the petitioner's land which he stated he would restore at his own expense.

6. As the petitioner did not respond, respondent No.1 made application dated 21.12.2016 before respondent No.3 seeking access to his land i.e., Survey No.129/1 through land of the petitioner i.e., Survey No.129/2.

7. It appears that the said application of respondent No.1 was treated as a plaint under Section 5 of the Mamlatdars' Courts Act, 1906 (briefly 'the Act' hereinafter) and on that basis, Case No.Rasta/Khubawali/SR/21/2017 was registered.

8. In this connection report from the Circle Officer was called for and he submitted his report dated 03.03.2017 to respondent No.3. It was mentioned therein that the defendant had filed written statement. On perusal of available documents, Circle Officer opined that there would be no problem in giving access to the plaintiffs through the road of the defendant so that property of the plaintiffs

could be accessed. This would be in conformity with condition No.21 in the non-agriculture (NA) permission / order of the defendant i.e., petitioner dated 13.11.1996.

9. Pursuant to such report of the Circle Officer, respondent No.3 wrote to the defendant i.e., petitioner vide letter dated 22.05.2017. Referring to condition No.21 of the order dated 13.11.1996, it was pointed out that access road should be kept open for usage of adjacent landholders. Therefore, it was pointed out that as per the said condition obstruction should not be created in the usage of the road of the defendant by adjacent farmers.

10. It is seen that evidence was adduced on behalf of both the sides whereafter written arguments were submitted.

11. By the order dated 31.05.2018, respondent No.3 passed order under Section 5(2) of the Act issuing directions to the effect that defendant (petitioner herein) should not obstruct plaintiffs (respondent Nos.1 and 2 herein) from accessing their land and transporting farming equipments to and from the plaintiffs' land bearing Survey No.129/1 at Mauje Khubawali, Taluka Mulshi, District Pune.

12. Assailing the aforesaid order dated 31.05.2018, the defendant (petitioner herein) preferred revision application before respondent No.4. However, by order dated 27.09.2019 respondent No.4 dismissed the revision application.

13. Aggrieved, the present writ petition has been filed seeking the reliefs as indicated above.

14. This Court by order dated 08.11.2019 while deferring the admission hearing of the case to 19.11.2019 passed an interim order to the effect that respondents should not proceed for compliance of the impugned orders.

15. Case of the petitioner is that it is a public trust registered under the Maharashtra Public Trust Act, 1950. It is running an educational institution following experimental education system. Petitioner enrolls students from all over the world who are resident students at the campus. Petitioner holds about 68.31 hectares of land comprising its campus consisting of academic block, administrative block, library, recreational area, hostel etc. The campus comprises land covered by Survey Nos.115, 115/1, 120, 121/1 to 3, 122/1 to 3, 124/1 to 3, 126/1 to 3, 127, 128/1 to 4, 137/1, 138/1, 138/2, 139/1 and 139/2 of Village Khubawali, Taluka Mulshi, Pune. It is stated that petitioner thereafter purchased land bearing Survey No.129/2 which is adjacent to Survey No.128 already purchased / owned by the petitioner. Survey No.129/2 is used as a playground for the students.

16. According to the petitioners, one Mr. Makarand Mukund Mahajani was the owner of a plot of land covered by Survey No.129/1 admeasuring 2 H 19 R 0P at Khubawali. The said land is stated to be reserved under the Maharashtra Private Forest Act, 1975. Respondent No.1 executed a sale deed dated 30.03.2004 with the said Mr. Mahajani purchasing land admeasuring 1H 10 R 0P out of the aforesaid total land area of Survey No.129/1. For the remaining area said Mr. Mahajani appointed one Mr. Dwarikanath Mishra as the constituted attorney vide irrevocable power of attorney dated 30.03.2004. Thereafter Mr. Mahajani, respondent No.1 and Mr. Dwarikanath Mishra on the one hand entered into an agreement for sale dated 07.02.2017 with respondent No.2 and Mr. Aakash Prahlad Khandelwal on the other hand for the entire land of Survey No.129/1. In this connection, Mr. Mahajani, respondent No.1 and Mr. Dwarikanath Mishra executed a power of attorney dated 07.02.2017 in favour of respondent No.2 for the entire land of Survey No.129/1. On the strength of the said power of attorney, respondent No.2 and his brother Mr. Aakash Prahlad Khandelwal executed sale deed dated 06.04.2017 in respect of the said Survey No.129/1.

17. According to the petitioner, respondent Nos.1 and 2 had knowledge that against the land under Survey No.129/1 it was remarked as 'private forest'. Being private forest, neither sale nor registration of sale of such land is permissible, to be used as agricultural land.

18. On 07.12.2016, petitioner received a letter from respondent No.1 stating that he wanted to do levelling work on the land, while admitting that he had removed the barbed wire from the petitioner's land which he stated he would restore at his own expense. According to the petitioner, he realised from this letter that some illegal activities were going on in the adjacent land which was private forest land. Since the activities were illegal, there was no question of petitioner providing any help to respondent No.1.

19. It is in this context that respondent No.1 made the application dated 21.12.2016 before respondent No.3 seeking access to Survey No.129/1 through Survey No.129/2.

20. When respondent No.3 directed enquiry through Circle Officer, petitioner objected to the same and pointed out the illegal activities carried out in Survey No.129/1. Notwithstanding such objection of the petitioner, Circle Officer submitted report dated 03.03.2017 to respondent No.3 opining favourably in favour of respondent No.1 by placing reliance on condition No.21 in the non-agriculture (NA) permission / order dated 13.11.1996 in respect of the lands covered by the survey numbers earlier purchased / owned by the petitioner.

21. On the basis of the report of the Circle Officer dated 03.03.2017, respondent No.3 informed the petitioner vide letter dated 22.05.2017 that in terms of the conditions imposed by the N.A. permission, petitioner was required to grant access to neighbouring agriculturists without any obstruction. According to the

petitioner, by agreement for sale dated 07.02.2017 and conveyance deed dated 06.04.2017, respondent No.2 along with Mr. Aakash Prahlad Khandelwal had purchased the plot of land covered by Survey No.129/1 from respondent No.1, Mr. Mahajani and Mr. Dwarkanath Mishra. Petitioner has further stated that after such purchase, respondent No.2 had undertaken illegal and unauthorized mining activities in Survey No.129/1 by using heavy machineries and excavators. Respondent No.2 mined over 3000 brass of land / soil from Survey No.129/1 unauthorizedly and illegally. As a matter of fact, taking cognizance of such illegal activities committed by respondent No.2, respondent No.3 had passed order dated 30.06.2017 to the effect that respondent No.2 had illegally mined 3883 brass of land / soil from Survey No.129/1 and directed payment of royalty and fine of Rs.94,64,279.00 on respondent No.2. Copy of the said order dated 30.06.2017 has been placed on record by the petitioner as Exhibit-D to the writ petition.

22. Be that as it may, following the letter dated 22.05.2017, respondent No.3 issued notice under Section 5 of the Act to the petitioner with regard to the application for access dated 21.12.2016. Petitioner filed its written statement and contested the application. Stand taken by the petitioner was that the N.A. permission / order referred to in the report of the Circle Officer did not apply to Survey No.129/2 from which access to Survey No.129/1 was sought for. It was further contended that the plot of land covered by Survey No.129/2 was not agricultural land and hence provisions of the Act were not applicable. Besides, the plaintiffs i.e., respondent Nos.1 and 2 have access to Survey No.129/1 from the boundaries of Village Ravade and that the road within the petitioner's campus is a private road. Use of excavator and heavy vehicle would damage the road. Besides, the said road ends in Survey No.128 and cannot be accessed from Survey No.129/2.

23. It is stated that respondent No.2 filed written submission before respondent No.3 on 08.11.2017. Respondent No.2 was thereafter examined and cross-

examined. On the other hand, one witness adduced evidence on behalf of the petitioner and he was also cross-examined.

24. By order dated 31.05.2018, respondent No.3 allowed the suit of respondent No.1 and directed the petitioner to refrain from obstructing access to respondent Nos.1 and 2 to their plot of land under Survey No.129/1.

25. Petitioner challenged legality and correctness of the said order dated 31.05.2018 by filing revision application before respondent No.4. However, respondent No.4 vide order dated 27.09.2019 dismissed the revision application and upheld the order dated 31.05.2018 passed by respondent No.3.

26. Respondent No.2 in his affidavit in reply has stated that one Shri Sudhakar Shankar Hirve was the owner of the land under Survey No.129/1. By registered sale deed dated 06.02.2002, he sold land admeasuring 2 H 19 R to one Shri Makarand Mukund Mahajani. Thereafter, by another sale deed dated 06.04.2004, respondent No.1 purchased the land under Survey No.129/1 from Shri Makarand Mukund Mahajani. Finally, respondent No.2 purchased the said plot of land from respondent No.1 by sale deed dated 06.04.2017.

27. Petitioner is the owner of the landed property under Survey Nos.115, 115/1, 120, 121/1 to 3, 122/1 to 3, 124/1 to 3, 126/1 to 3, 127, 128/1 to 4, 137/1, 138/1 to 2, 139/1 to 2 and 129/2. After purchase of the said landed property and in order to develop the same, petitioner prepared layout plan and sought permission from the concerned authorities for non-agricultural use. It is stated that the said application of the petitioner dated 11.10.1996 was considered by the Collector, Pune under Section 44 of the Maharashtra Land Revenue Code, 1966 whereafter order dated 13.11.1996 was passed by the Collector granting permission to the petitioner for non-agricultural use of the land covered by the aforesaid survey numbers. However, such permission granted was made subject to certain conditions.

28. It is stated that from a perusal of the layout of the properties of the petitioner, it would be evident that the black top tar road constructed by the petitioner almost reaches the boundary of the property of respondent No.2 i.e., Survey No.129/1 from Survey No.129/2 which is owned by the petitioner. It is further stated that as per condition Nos.20 and 21 of the N.A. permission / order, petitioner was required to give access to the adjacent land holders.

29. Respondent No.2 has stated that application was made to the Mamlatdars' Court for directing the petitioner for granting access through the road to his property without any obstruction from the petitioner. This was required for transporting JCB and other agricultural equipments through the property of the petitioner for planting trees.

30. Respondent No.2 has stated that his property is surrounded by properties owned by the petitioner and except the road within the property of the petitioner, there is no other alternative road to access the land of respondent No.2. According to respondent No.2, his land under Survey No.129/1 is surrounded by land of the petitioner under Survey No.129/2 on the eastern side; land under Survey No.130 on the southern side; and land under Survey No.128 on the northern side. All the lands are owned by the petitioner. On the western side, there is a hill cliff. Witness on behalf of the petitioner had admitted during his cross-examination that there is no alternative access to the property of respondent No.2 except through the road constructed by the petitioner over his land since property of respondent No.2 is surrounded by the property of the petitioner.

31. Further stand taken by respondent No.2 is that petitioner had allowed his predecessor-in-title to use the access road till the month of December, 2016. It was only thereafter that he stopped granting access through his land.

32. It is stated by respondent No.2 that during the pendency of Section 5 proceeding before the Mamlatdars' Court, he had purchased the land and has become the owner thereof thus stepping into the shoes of the original plaintiff i.e., respondent No.1. Therefore, he has the locus to pursue the proceedings initiated by respondent No.1.

33. Regarding the allegation by the petitioner about alleged illegal excavation of minor minerals, respondent No.2 has stated that it is a separate issue and respondent No.2 has raised his grievance in respect thereof before the appropriate authority. Stating that finding returned by respondent No.3 as affirmed by respondent No.4 is a finding of fact which calls for no interference, respondent No.2 seeks dismissal of the writ petition.

34. Submissions made by learned counsel for the parties are on pleaded lines. Therefore, a detailed reference to the same is considered not necessary. However, the submissions so made have been given due consideration.

35. On going through the order dated 31.05.2018 passed by respondent No.3 in the proceeding under Section 5 of the Act, it is seen that respondent No.3, after summarizing the pleadings and evidence of the parties, had framed four points for consideration which are as under:

1. Whether the road of access of the plaintiffs passes through the land of the defendant?
2. Whether defendant has obstructed this road without any legal authority?
3. Whether the obstruction caused by the defendant was done within six months prior to filing of the suit by the plaintiffs?
4. Whether the action of the defendant has obstructed the plaintiffs from accessing their land?

Be it stated that respondent Nos.1 and 2 were the plaintiffs and the petitioner was the defendant.

36. Regarding point No.1, respondent No.3 arrived at the finding that the land of the plaintiffs bearing Survey No.129/1 is situated on the eastern side of the property of the defendant under Survey No.128. Further finding recorded was that the defendant owned land on the northern, southern and western sides of the property of the plaintiffs bearing Survey No.129/1. This was admitted by the witness Shri. Navnath Bhaigude, who had deposed on behalf of the defendant during his cross-examination. Further, there is a road shown in Survey Nos.115, 115/1, 120, 121/1 to 3, 122/1 to 3, 124/1 to 3, 126/1 to 3, 127, 128/1 to 4, 137/1, 138/1, 138/2, 139/1 and 139/2 in the layout of the order dated 13.11.1996 passed by the Collector, Pune. Therefore, respondent No.3 concluded that this road was the access road to the land of the plaintiffs which passes through the land of the defendant.

37. In so far point No.2 is concerned, respondent No.3 referred to condition No.21 of the N.A. permission / order dated 13.11.1996 and has stated that the tar road has been constructed in the properties of Survey Nos.115, 115/1, 120, 121/1 to 3, 122/1 to 3, 124/1 to 3, 126/1 to 3, 127, 128/1 to 4, 137/1, 138/1, 138/2, 139/1 and 139/2 upto the property at Survey No.129/2. In spite of clearly mentioning that access to the land owners of the adjacent lands has to be provided, defendant has obstructed access through the said road to the land of the plaintiffs.

38. In so far point No.3 is concerned, respondent No.3 has stated that obstruction to the access road was made from 07.12.2016, which is well within the period of six months prior to filing of the suit.

39. Regarding point No.4, specific finding of respondent No.3 is that on all three sides of the land under Survey No.129/1 of the plaintiffs are lands owned by the defendant. In other words, land of the plaintiffs is surrounded by land of the defendant. The witness who deposed on behalf of the defendant i.e., Shri Navnath

Bhaigude had stated in his cross-examination that defendant did not give permission to the plaintiffs to transport farming equipments, vehicles, etc. to their land which was required for planting trees. Further, respondent No.3 noted that the land under Survey No.129/1 was purchased by respondent No.2 from respondent No.1. That apart, respondent No.3 also noted the submission on behalf of the defendant that the layout in the order dated 13.11.1996 was approved by the Collector, who is the competent authority under the Maharashtra Regional and Town Planning Act, 1966.

40. Under the above circumstances, respondent No.3 passed order dated 31.05.2018 issuing strict permanent directions to the defendant not to obstruct the plaintiffs from accessing their land and transporting farming equipments to and from the plaintiffs' land under Survey No.129/1 at Mauje Khubawali, Taluka Mulshi, District Pune. Revision Application filed by the defendant i.e., petitioner before respondent No.4 against the order dated 31.05.2018 was rejected vide order dated 27.09.2019. Respondent No.4 after recording the facts, pleadings and evidence adduced came to the conclusion that respondent No.3 had passed the order dated 31.05.2018 after making proper enquiry as per provisions of the Act and the said decision was appropriate. Respondent No.4 thereafter held that on all the counts, petitioner had failed to disprove or dislodge the finding recorded by respondent No.3. No evidence was tendered on behalf of the petitioner to show that it did not create obstruction or that respondent Nos.1 and 2 have any other alternative road. Holding that the order dated 31.05.2018 was in accordance with law which did not call for any interference, respondent No.4 dismissed the revision application of the petitioner.

41. As per Section 3 of the Act, the word 'Mamlatdar' includes any revenue officer exercising the powers of the Mamlatdar or a Mahalkari and any other person who may be specially authorized by the State Government to exercise the powers of a Mamlatdar. Section 5 deals with powers of a Mamlatdar Court. As per

sub-section (1), a Mamlatdar's Court has the jurisdiction to remove impediments or obstructions of any water channel, project road, etc. Sub-section (2) provides that a Mamlatdar's Court has the power to issue injunction. As per sub-section (3), a suit before the Mamlatdar's Court has to be instituted within six months from the date on which the cause of action arose which expression is defined in sub-section (4).

42. Even an informal petition may be treated as a plaint if the subject matter falls within the scope of Section 5. Detailed procedure regarding plaint, filing thereof, rejection or return of plaint, etc. are provided. Once the plaint is found admissible, the procedure to be followed thereafter is provided from Section 14 onwards which includes adducing of evidence. How orders of the Mamlatdar's Court are to be executed is provided in Section 21.

43. Sub-section (1) of Section 23 bars filing of any appeal against an order passed by Mamlatdar. However, Collector has the revisional power to examine the legality or propriety of any proceeding in the Mamlatdar's Court. Having regard to the scheme of the Act and the fact that jurisdiction of the Mamlatdar's Court is confined to removing obstruction to access land what is noticeable is that respondent No.3 while exercising power as the Mamlatdar has recorded the finding that land of respondent Nos.1 and 2 are surrounded by land of the petitioner; access to land of respondent Nos.1 and 2 can be only through the land of the petitioner; petitioner has constructed a tar road which runs through its entire property right up to the boundary of the land of respondent Nos.1 and 2. It was also found that petitioner has obstructed access to the land of respondent Nos.1 and 2. It is in these circumstances that the impugned order dated 31.05.2018 was passed by respondent No.3. Findings recorded by respondent No.3 as alluded to hereinabove are findings of fact arrived at on the basis of pleadings and evidence. Such findings of fact have been affirmed by the revisional authority i.e., respondent No.4.

44. During the proceedings before respondent No.3, the due procedure prescribed under the Act was followed. Petitioner was afforded reasonable opportunity to have its say. The view taken by respondent No.3 in the factual backdrop cannot be said to be an erroneous finding based on material irregularity.

45. Thus in the absence of any perversity, procedural impropriety or material irregularity, this Court would not like to disturb the concurrent findings of fact returned by two authorities exercising jurisdiction under the Act, that too, by exercising extra-ordinary jurisdiction under Article 226 of the Constitution of India.

46. For the aforesaid reasons, Court is not inclined to entertain the writ petition. Writ petition is accordingly dismissed. However, parties to bear their own costs.

(UJJAL BHUYAN, J.)

Minal Parab