

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 555 OF 2020

1) Pralhad s/o Shivram Shrinath
Aged about 75 years, Occu. Agri.

2) Kailash s/o Haribhau Chaware
Aged about 52 years, Occu. Agri

Both R/o Hatgaon, Tah.Murtizapur
Dist. Akola

.. PETITIONERS

...VERSUS...

1) Deputy Collector,
Murtizapur – Barshi Takli,
Office at Murtizapur,
District – Akola

2) The Naib Tahsildar
Murtizapur, Dist. Akola

3) Gajanan s/o Bhimrao Hengad
Aged about 70 years, Occ. Agri.
R/o Hatgaon, Tah. Murtizapur,
District – Akola

.. RESPONDENTS

Mr. A. M. Tirukh, counsel for the petitioners.
Ms. T. H. Khan, AGP for respondent Nos.1 and 2.

CORAM :- **MANISH PITALE J.**
DATED :- **15 /12 /2020**

ORAL JUDGMENT

Heard.

(2) **Rule.** Rule made returnable forthwith. The writ petition is heard finally with the consent of learned counsel for the rival parties.

(3) By this petition, the petitioners have challenged orders passed by the respondent Nos.1 and 2, under the provisions of the Mamlatdars' Courts Act, 1906, whereby an application filed under Section 5 of the aforesaid Act by respondent No.3, stood allowed and a direction was given to the petitioners to give way to the said respondents through their agricultural fields.

(4) Notice was issued in this writ petition and the contesting respondent No.3 was served but, he has chosen not to appear before this Court. The learned AGP has appeared on behalf of respondent Nos.1 and 2.

(5) The principal contention raised on behalf of the petitioners in this writ petition is that a perusal of the application dated 11/07/2014, submitted by the respondent No.3 which was treated as an application / suit under Section 5 of the aforesaid Act by the respondent No.2, was bereft of details required to be stated for triggering an action under the provisions of the said Act. It was brought to the notice of this Court that the date on which the cause of action arose for the respondent No.3 was not stated and this was crucial for the respondent No.2 to exercise jurisdiction under Section 5 of the said Act, which could be exercised only if the cause of action had arisen within six months of filing of such an application. It is further submitted that under Sections 5 and 7 of the aforesaid Act, the respondent No.2 was expected to ensure that the proceeding initiated by respondent No.3 satisfied the mandatory requirements of the Act, to be treated as suit for the relief of right of way asserted by the respondent No.3. According to the learned counsel for the petitioners, these mandatory provisions are never satisfied, although specific objection in that regard was raised on behalf of the petitioners.

(6) It was additionally submitted that the spot inspections carried out in the present case were all behind the back of the petitioners and that for this reason also the impugned order deserved to be set aside.

(7) The learned AGP appeared on behalf of respondent Nos.1 and 2. In the reply filed on behalf of the said respondent, it is conceded that when the spot inspections were carried out, the petitioners were not put to notice. On this basis, it was submitted that the matter could be remanded back to respondent No.2 for fresh consideration.

(8) This Court has considered the contentions raised on behalf of the rival parties. As noted above, the respondent No.3 has chosen not to appear before this Court, despite service of notice.

(9) A perusal of the impugned orders passed by respondent Nos.1 and 2 shows that there is no discussion on the specific objection raised on behalf of the petitioners regarding failure on the part of respondent No.3 to comply with the mandatory requirements of the aforesaid Act, for the proceeding

initiated on 11/07/2014 to be treated as a suit under Section 5 of the aforesaid Act. This Court in the case of **Gaurakshan Sansthan, Murtizpur vs. State of Maharashtra and others, 2019(3) ALL MR 849**, has held that the aforesaid requirements under the said Act are mandatory and non-compliance thereof would lead to setting aside of any orders passed by the authorities in favour of the applicant. There is nothing on record to show that the said mandatory requirements in the present case were satisfied and therefore, there is substance in the contentions raised on behalf of the petitioners.

(10) In view of the specific statement made in the reply filed on behalf of the respondent Nos.1 and 2, it becomes clear that the petitioners were not put to notice when the spot inspections were carried out and therefore, any conclusions derived by the respondent Nos.1 and 2 based on such spot inspection reports were rendered unsustainable. The impugned orders deserved to be set aside on this ground also.

(11) On the question of remand of proceedings before respondent No.2, this Court is of the opinion that such a direction is not warranted in the facts and circumstances of the

present case. In any case, if the respondent No.3 is able to establish that a fresh cause of action has arisen under the provisions of the said Act, based on an alleged existing right of way, the said respondent can initiate proceedings before the appropriate authority.

(12) In view of the above, the writ petition is allowed. The impugned orders passed by respondent Nos.1 and 2 are quashed and set aside. No costs.

JUDGE

KOLHE/PA.