

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

908 WRIT PETITION NO.3923 OF 2021

SHRIRAM ABHIMAN NAFADE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for Petitioners : Mr. Mahesh Bhosale h/f Adv.
Mr. A. M. Salok
AGP for Respondent nos. 1 to 4: Mr. Kiran B. Jadhavar
Advocate for Respondent nos.1 to 4 : Mr. Dhananjay Mane h/f
Mr. D. M. Pingale
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CORAM : AVINASH G. GHAROTE, J.

DATED : 14th JULY, 2021.

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PER COURT :

1. Heard Mr. Amol Salok for the petitioners, Mr. Dhananjay Mane, holding for Mr. Pingale, learned counsel for respondent no.7 and learned AGP for respondent nos. 1 to 4.

2. The learned counsel for the petitioners takes exception to the order passed by the revisional authority dated 27/11/2020, contending that it is based upon total mis-appreciation of the factual position on record as reflected from the order of Mamlatdar dated 21/07/2020. He points out to page 16, para 6 in which, the evidence on behalf of witnesses of the petitioners and respondents, have been discussed, as well as the availability of alternate way as claimed has also been considered and so also para 3 of the reasoning which indicates that

on 8/8/2019 a spot inspection was conducted by the Mamlatdar personally. He further submits, that the property in respect of which the road was sought is clearly described and considered by the Mamlatdar, which is evident from the perusal of the impugned order, which indicates that the petitioner was the owner of Gut Nos. 62 and 63 and was requiring a road between the boundary of Gut Nos.58 and 59.

3. Learned AGP appearing for respondent Nos. 1 to 4 supports the impugned order passed by the Sub-Divisional Officer in revision. None appears for respondent Nos. 5 & 6 though they are served. Even otherwise learned counsel for respondent No.7 submits, that the respondent Nos. 5 & 6 are formal parties as they are supporting the petitioners.

4. Advocate Mr. Dhananjay Mane, learned counsel holding for Mr. Pingale, learned counsel for respondent No.7 submits, that the application under Section 5 (2) of the Mamlatdar Courts Act, itself was infirm as it did not comply with the requirements of Section 7 and also did not disclose the cause of action, due to which the same ought to have been returned back. He further submits, that though no ground in this regard was raised before the Mamlatdar in his reply or otherwise, till the decision of the proceedings under Section 5 (2) of the Mamlatdar Courts Act, however, ground in this regard was raised in the Revision before the

Sub-Divisional Officer, which is considered by the Sub-Divisional Officer, as reflected from record page 35. Learned counsel therefore, submits that the order of Sub-Divisional Officer, on this count, is correct. He has further tried to justify the observations made in paragraphs 2 and 3 at page 36. Learned counsel however, seeks sometime to place judgments on record in support of his contention, that the application as filed by the petitioner, itself was not maintainable.

5. List the Matter at 2.30 p.m.

6. Mr. Mane, learned Counsel for the petitioner, contends that the position as to absence of cause of action, has been raised in ground No.10 of the memo of revision and therefore the same has rightly been considered by the Revisional Court. He further submits, that in case a pathway is claimed over the boundaries of two surveys, then the remedy, is under Section 143 of MLR Code before the Tahsildar and not otherwise. He further raises a grievance, that Section 19 (2) of the Mamlatdar Courts Act requires a notice to be given prior to spot inspection, however the same has not been given, in respect of the inspection dated 27.03.2020 for which he invites my attention to page 13 of the record. He further submits, that there was an alternate road available, which was being used by the petitioner for 1 ½ years and therefore, the impugned order ought not to be interfered with. Mr. Mane

relies upon decision of this court in ***Kamlabai Kisan Gupte vs Santosh Bhagirath Mote, Writ Petition No. 987 of 2013 and Bhima Shankar Tambe vs SDO, WP No. 599 of 2016***, both of which go to hold that in absence of the requirement under Section 7 being satisfied and the action under Sections 8 and 9 being done by the Mamlatdar, the matter needs to be remanded back.

7. Mr. Salok, learned Counsel for the petitioner, relies upon ***Vishnu Sukhdeo Ghanwat vs Collector, 2017 (1) Mh.L.J. 811***, to contend that where common bunds are usable as footpath and any obstruction is made thereupon, it must be removed by revenue authority. He also relies upon ***Shrikrishna Sheshrao Dane and another vs Vasant Ramrao Tayade and another, 2018 (2) Mh.L.J. 98***, which holds that the Mamlatdar's decision, holding, that the finding of the Mamlatdar regarding existence of way, could not have been compared with the way claimed by the defendant and the reversal therefore of the decision of the Mamlatdar by the Revisional Court, was not justified. He further places reliance on ***Vasudev Pandharinath Raikar and others vs Manoj Mohand Dalvi and others, 2018 (4) Mh.L.J. 927***, to contend, that contention raised for the first time before this Court, ought not to be entertained.

8. What needs to be kept in mind, while deciding proceedings

under the Mamlatdar Courts Act, is that an application regarding obstruction or impediment or for any relief that is permissible under the Mamlatdar Courts Act, is normally made by an agriculturist, who is not aware of the requirements of law and it is for this reason, that sections 8 and 9 of the Mamlatdar Courts Act, cast a burden upon the Mamlatdar, in case of the application / plaint not complying with the requirements as contained in Section 7, to get the said information from the agriculturist / plaintiff. The very purpose of this, is not to reject the plaint at the outset, but to make all efforts, to ensure, that the requirements, for a plaint as enumerated in section 7, are fulfilled. The language of sections 8 and 9 of the Mamlatdar Courts Act, indicates, that this is a duty cast upon the Mamlatdar to ensure the obtaining of information, and recording it, so as to cure the lacunas in the application, in order to ensure, the requirements of Section 7 are fulfilled. Thus, when the statute casts an obligation upon the Mamlatdar, the plaintiff / agriculturist, ought not to suffer, on account of the Mamlatdar, failing to perform his obligation under sections 8 and 9 of the Mamlatdar Courts Act. Considering the level of literacy in the rural parts of the State, and the nature of the proceedings under the Mamlatdar Courts Act, it may not always be possible for an agriculturist, to take legal advice, before filing a complaint / plaint, regarding the obstruction. From the profusion of matters coming before this court, this clearly appears to be so. It is for this reason, that sections 8 and 9, have been inserted in the Mamlatdar

Courts Act, 1906. This being the position, merely because the application / plaint does not comply with the requirement of section 7, the same cannot be thrown out, on account of non compliance by the Mamlatdar of his statutory obligation under Sections 8 and 9 of the Mamlatdar Courts Act.

9. In the instant matter, the application dated 20.06.2019, makes a specific mention, to remove the obstruction from the way which was being used by the petitioner, on the boundary of survey Nos. 58 and 59, out of which survey No. 59 is owned by the respondent No.7. It would further be material to note, that a plea regarding, the plaint not complying with the requirements of Section 7 of the Mamlatdar Courts Act was not taken by respondent No. 7, in his written statement dated 13.11.2019 as is evident from perusal of the same. Needless to say that the law would enjoin that any objection regarding absence of the requirements under Section 7 of the Mamlatdar Courts Act, ought to be taken, at the first instance, whereupon the Mamlatdar, is empowered to exercise his powers under Section 12 of the Mamlatdar Courts Act, after having first discharged his obligation under Sections 8 and 9 of the said Act. This admittedly has not been done in the present matter. Though Mr. Mane, learned counsel for respondent No. 7 rightly contends, that a ground in that regard has been taken in the memo of revision, it equally remains, that respondent No. 7 participated in the proceedings before the

Mamlatdar and without raising any grievance, took the chance of an order. Questions about obstructions to the right of way, are to be decided expeditiously, and re-opening and pendency of the proceedings would not only cause prejudice, but also not serve the purpose. Therefore, though, in **Kamlabai Kisan Gupte** (supra) it has been held, that the Mamlatdar, has an obligation under sections 8 and 9 which he ought to follow, and it would be inappropriate to non suit the petitioner on account of his failure in that regard, which supports what I have expressed above, I am not inclined to follow the same in so far as it remands the matter to the Mamlatdar, to enable the plaintiff, to rectify the defects, in light of what is required in Section 7 of the Mamlatdar Courts Act. This is so for the reason that by the time the proceedings reach the High Court, the entire material necessary for deciding the proceedings, is already on record and it would be a tavestry of justice after passage of a number of years, to relegate the plaintiff, to the original position of filing of the plaint. Similar is the position in respect of the judgment in ***Bhima Shankar Tambe*** (supra).

10. The contention by Mr. Mane, learned counsel for respondent No. 7, that in case of a pathway claimed over the boundaries of two survey numbers, the remedy would be under Section 143 of the MLR Code before the Tahsildar and not before the Mamlatdar, is clearly misplaced for the reason that, section 143 of MLR Code, would come

into play where right of way is being claimed, over the boundaries of two survey numbers. In proceedings under the Mamlatdar Courts Act the way is already there, and what has been sought, is to remove the obstruction or impediment over the same and therefore, the contention of Mr. Mane in this regard, is not acceptable.

11. In respect of the grievance by Mr. Mane, learned counsel for respondent No.7, that no notice under Section 19 (2), of the spot inspection, dated 27.05.2020, was received and therefore, the entire proceedings, were vitiated, as upon receipt of such a notice the alternate way available could be pointed out by him, has to be viewed in the contextual background, of the fact that in pursuance to the inspection dated 27.05.2020, in which the road was found to be obstructed by erecting a wooden obstacle, and it was found that there was no other road available, the direction to immediately open the road was issued, which has already been complied with as is indicated by the panchnama dated 7.8.2020. That apart, nothing prevented, the respondent No. 7, to have pointed out, the existence of an alternate road, before the Revisional Authority, which does not appear to have been so done.

12. A perusal of the order of SDO, which is very sketchy, only records, that no documentary or oral evidence was taken, the ascertainment of an alternate road was not done, for which gut numbers

the road was required, was not mentioned. In fact, the perusal of the order of Mamlatdar clearly indicates, that the dispute was in respect of the road on the boundaries of Gut Nos. 58 and 59 as well as the examination of the witnesses as indicated from para-6 at record page-16. It also speaks about the spot inspection dated 08.08.2019 and so also the spot inspection dated 27.05.2020. It also records the cause of action had arisen on 19.01.2020, when the road was closed.

13. That being the position, I do not find that the order of the Revisional Court was justified, when all the necessary requirements of the MC Act, stood satisfied, may be belatedly, and there was no justification whatsoever, for the Revisional Court to remand the same. The order of remand by the SDO is therefore quashed and set aside. The petition is accordingly allowed to the above extent.

(AVINASH G. GHAROTE, J.)

vdd/-