

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7310 OF 2020

Sanjay Pandit Patil

...PETITIONER

VERSUS

Smt. Latabai Walmik Marathe & ors.

... RESPONDENTS

.....

Shri S.V. Suryawanshi, Advocate for petitioner

Smt. A.N. Ansari, Advocate for respondent No.1.

Shri A.B. Chate, A.G.P. for respondents No.2 & 3

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WITH

WRIT PETITION NO.7342 OF 2020

Dhankorbai Kisan Patil & anr.

...PETITIONERS

VERSUS

Smt. Latabai Walmik Marathe & ors.

... RESPONDENTS

.....

Shri S.V. Suryawanshi, Advocate for petitioner

Smt. A.N. Ansari, Advocate for respondent No.1.

Shri A.B. Chate, A.G.P. for respondents No.2 & 3

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CORAM : R. G. AVACHAT, J.

Date of reserving order : 3rd February, 2021

Date of pronouncing order : 6th April, 2021

ORDER :

Both these writ petitions are being decided by this
common order since the challenge therein is to the one and

the same order passed by the Mamlatdar, Pachora on 30/4/2020 in a suit, No.183/2019 under Section 5 of the Mamlatdar's Courts Act, 1906 (for short the Act). By the impugned order, the Mamlatdar allowed the application dated 24/6/2019 filed by the respondent No.1 and directed to remove the obstruction/ impediment created on the suit way.

2. Heard learned counsel for the parties. Perused the impugned order and the relevant documents relied on.

Shri S.V. Suryawanshi, learned counsel appearing for the petitioners in both the petitions would submit that the petitioners were not parties to the proceedings wherein the impugned order has been passed. The respondent No.1 had preferred the application dated 24/6/2019 seeking permission for self immolation. The Mamlatdar appears to have treated the said application as a plaint in a suit under Section 5 of the Act. The Mamlatdar did not follow the procedure contemplated under the Act. In fact, no proceeding did take place pursuant to the application dated 24/6/2019. The Mamlatdar simply passed the impugned order even without issuing notice to the petitioners herein. Learned counsel, therefore, urged for setting aside the impugned order.

3. Smt. A.N. Ansari, learned counsel for respondent

No.1 in both the petitions would, on the other hand, submit that the impugned order has already been executed. The petitions have, thus, become infructuous. According to the learned counsel, there is a decree of the Civil Court passed in Regular Civil Suit No.11/1995 on 30/6/1995, whereby the owners of the land Gut Nos.116, 117 and 118 have been restrained from obstructing the husband of the respondent No.1 from making use of the suit way. The petitioners herein claim through the owners of these lands. The decree in Regular Civil Suit No.11/1995 is, therefore, binding on the petitioners.

4. The petitioner in Writ Petition No.7310/2020 is owner, in possession of land Gut No.118. While the petitioners in Writ Petition No.7342/2020 are the owners, in possession of land Gut No.116. The husband of respondent No.1 was the owner, in possession of land Gut No.114/1. It appears that, for approaching the land Gut No.114/1, the husband of the respondent No.1 claimed to have a right of way through the lands Gut Nos.116, 117 and 118.

5. A copy of the application dated 24/6/2019 preferred by the respondent No.1 to the Mamlatdar, Pachora is on record. The application was made against six persons.

None of the petitioners had been named in the said application. The title of the said application indicates that the respondent No.1 had urged for permission for self immolation since the respondents in the said application were not allowing her to use the suit way for approaching her land Gut No.114/1. It appears that, the Mamlatdar converted the said application as one under Section 5 of the Act. Perusal of the impugned order would indicate that the petitioners herein had neither been parties to the said proceedings nor were served with the notice thereof before the Mamlatdar passed the impugned order. Thus, it appears that, the Mamlatdar has not followed the provisions of Sections 8 to 15 of the Act. It is reiterated that, the impugned order has been passed against the petitioners herein without giving them an opportunity of hearing and, therefore, the impugned order is non est in law. The same is, therefore, liable to be set aside even if it is assumed the same to have been executed.

6. There is, however, another aspect of the matter. The petitioners have produced on record a copy of the judgment dated 30/6/1995 passed by Civil Judge, Junior Division, Pachora in Regular Civil Suit No.11/1995. It was a suit filed by the husband of respondent No.1 against Baliram Devsing Patil, Gayabai w/o Pandit Patil and Dhankorbai w/o

Kisan Patil. Gayabai is mother of the petitioner in Writ Petition No.7310/2020. While Dhankorbai is petitioner No.1 in Writ Petition No.7342/2020. The petitioner No.2 therein claims to have purchased some of the portion of land Gut No.116 from Dhankorbai. The suit (Regular Civil Suit No.11/1995) was decreed with the following order :

“The suit is decreed with costs.

Accordingly it is hereby declared that plaintiff has right to go to his land by using the suit path which passes between the gat no.116 and 118 on its western side while gat no.117 on eastern side in village Pardhade, Taluka Pachora, Distt. Jalgaon.

The defendant no.1 to 3 or any person claiming under them are hereby perpetually restrained from obstructing plaintiff from using the above said suit path from going to his land in any manner.”

7. In the year 1995, the petitioner Sanjay must have been minor. His mother Gayabai was a party to the suit. The subject matter of the said suit was the right of way through the land presently belonging to the petitioners. Since the predecessor-in-title of the present petitioners and the petitioner Dhankorbai herself was a party to the said suit, the decree passed therein binds the petitioners herein so long as it holds the field. The decree would run with the lands.

8. The impugned order passed by the Mamlatdar is hereby set aside. However, it is observed that the petitioners are bound by the decree passed in Regular Civil Suit No.11/1995 and, therefore, there is an injunction restraining them from obstructing the respondent No.1 from making use of the suit way, the subject matter of Regular Civil Suit No.11/1995.

The Writ Petitions are disposed of.

**(R. G. AVACHAT)
JUDGE**

fmp/-