

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7606 OF 2020

Ajay s/o Nandkishor Bhailume & ors. ...**PETITIONERS**

VERSUS

The Sub-Divisional Officer & others ... **RESPONDENTS**

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Shri D.P. Palodkar, Advocate for petitioners
Shri S.N. Morampalle, A.G.P. for respondents No.1 and 2
Shri A.R. Devakate, Advocate for respondent No.3

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CORAM : R. G. AVACHAT, J.

DATED : 8th FEBRUARY, 2021

ORDER :

Heard Mr. Palodkar, learned counsel for the petitioners, Mr. Morampalle, learned A.G.P. for respondents No.1 and 2 and Mr. Devakate, learned counsel for respondent No.3.

The challenge in this Writ Petition is to the order dated 10/9/2020, passed by the Sub-Divisional Officer, Karjat, in Revision No.7/2020. By the impugned order, the Sub-Divisional Officer has set aside the order passed by the Mamlatdar, Karjat in Rasta Wahiwat Case No.20/2019, dated

10/1/2020. The Mamlatdar had allowed the application moved by the petitioners herein. The Mamlatdar had directed the respondents to clear the way that has been in existence through the land Gut No.383. The Sub-Divisional Officer, Karjat, vide impugned order, set aside the Mamlatdar's order with a direction to open up a Panand way that has been in existence along the land Gut Nos.378 to 380.

2. Mr. Palodkar, learned counsel for the petitioners would submit that, the petitioners are owners, in possession of the lands Gut Nos.377(P), 379, 381/1, 381/2, 370(P), 213(P) and 217(P); while the respondent no.3 is owner of the land Gut No.383. It is the case of the petitioners that, on the southern side of Gut No.383, an approach road is in existence for several years. This road has been used by the petitioners to approach their aforesaid agricultural lands. The respondent No.3 has sought for permission to use the land in Gut No.383 for non-agricultural purpose. The authorities have granted him such permission. The respondent No.3 has thus created obstacle in user of the existing road that goes through the land Gut No.383. The lands are situated within the Municipal limits of Karjat Nagar Panchayat. Karjat-Koregaon Road runs east-west. The said road is onto the south of the land Gut No.383. Towards southern side of this land, there is a stream.

A G.P.S. map was produced before the Mamlatdar. The Mamlatdar visited the site and drew the spot panchanama. The situation at the site has been delineated in the said map. After considering the material before him, the Mamlatdar had passed the order directing the respondent No.3 to clear the way.

3. Learned counsel would further submit that, the Sub-Divisional Officer travelled beyond the scope of revisional jurisdiction. She paid visit to the site, and an altogether new direction has been issued to the respondent No.3 to open up the Panand way. According to learned counsel, in a proceeding under Section 5(2) of the Mamlatdar's Courts Act, 1906 (the Act of 1906), it has only to be seen whether there exists a way/ road and the same is obstructed. The Mamlatdar, on spot inspection, found existence of the way and obstruction to its user at the hands of the respondent No.3, rightly passed the order. The Sub-Divisional Officer ought not to have interfered with the Mamlatdar's order.

4. Shri A.R. Devakate, learned counsel for the respondent No.3 would submit that, there exist no way through the land Gut No.383. Panand way is there. The Sub-Divisional Officer has rightly directed the Mamlatdar to open

up the same. According to learned counsel, no interference with the impugned order is called for.

Learned A.G.P. supported the impugned order.

5. The proceedings under Section 5(2) of the Act of 1906 have all the trappings of a civil suit. Suit before the Mamlatdar commences by presentation of the plaint. Section 7 of the Act of 1906 speaks of contents of the plaint. The plaint is required to be verified. Section 12 of the Act empowers the Mamlatdar to reject the plaint in certain circumstances. When the plaint is found to be admissible, the Mamlatdar is supposed to issue a notice, calling upon the defendants to appear in the proceedings. Section 15 empowers the Mamlatdar to enforce attendance of witnesses. He is supposed to record evidence of witnesses examined in the case. It necessarily means that the other side has a right to cross-examine witnesses. The Mamlatdar has also been empowered to examine witnesses on his own. As such, the Scheme under the Act indicates that provisions of Indian Evidence Act are applicable thereto.

6. After going through the proceedings before the Mamlatdar, it appears that, he did not call upon either of the parties to produce their respective evidence. On the first day

of hearing, he paid visit to the site and drew spot panchanama. The Mamlatdar found existence of a path way through the land Gut No.383. Adjoining to the land Gut No.383 onto north, there is land Gut No.381/1 belonging to one of the petitioners herein. The path way that was seen in the land Gut No.383 was found to have gone through the land Gut No.381/1. The Sub-Divisional Officer was justified to observe that, had there been a cart-way in existence, it would have been there through the land Gut No.381/1. The Sub-Divisional Officer was also justified to observe that the Mamlatdar, without there being any evidence, jumped to the conclusion that there must have existed a cart-way.

7. It was submitted that, a G.P.S. map was presented before the Mamlatdar. I am afraid, how the same could be read in evidence without the same having been formally proved. It is true that, it is the choice of the parties to the proceedings whether to lead any evidence in support of their claim. The fact, however, remains that the conclusion in the proceeding is to be arrived at on the basis of evidence produced. The Mamlatdar is also empowered not to pass any order under Section 5(2) of the Act of 1906 directing removal of the impediment if he finds that passing of such order would be inequitable. While considering such aspect of

inequitability, the existence of alternate way may be a factor to be taken into consideration. Be that as it may, since the Sub-Divisional Officer has set aside the Mamlatdar's order, the proceedings before the Mamlatdar needs to be taken to its logical conclusion after parties thereto are given opportunity to examine witnesses, if any, and produce documentary evidence if they so desire.

8. At the cost of repetition, it is stated that, except the material in the nature of a spot inspection report, there was nothing before the Mamlatdar to come to the conclusion about the existence of the cart-way through the land Gut No.383. The Sub-Divisional Officer was, therefore, justified in setting aside the Mamlatdar's order. True, the Sub-Divisional Officer, in exercise of revisional jurisdiction, ought not to have directed the Mamlatdar to open up a Panand way. It is, however, to be stated that, the Mamlatdar, on his own, without reference to the present proceedings, can open up a Panand way for the user of the adjoining land holders.

9. The writ petition, therefore, deserves to be allowed. The same is allowed. The order dated 10/9/2020, passed by the Sub-Divisional Officer, Karjat, in Revision No.7/2020 is set aside. The matter is remanded back to the

Mamlatdar to decide it afresh after giving opportunity of hearing to the parties to the proceedings. Needless to mention, the Mamlatdar shall not be influenced by the observations made hereinabove.

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

fmp/-