

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.8370 OF 2020

Laxman s/o Rukhmaji Jambilwad

...PETITIONER

VERSUS

Potanna s/o Ganpati Jambilwad
and others

... RESPONDENTS

.....
Shri P.R. Katneshwarkar, Advocate for petitioner
Shri A.B. Shinde, Advocate for respondent No.1.
Shri Y.G. Gujarathi, A.G.P. for respondents No.2 & 3
Shri S.V. Patil, Advocate for respondent No.4
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CORAM : R. G. AVACHAT, J.

Date of reserving order : 4th March, 2021

Date of pronouncing order : 9th March, 2021

ORDER :

This petition is directed against the order dated 8/3/2021, passed under Section 5(2) of the Mamlatdar's Courts Act (the Act for short), by Mamlatdar, Ardhapur, and the order dated 17/11/2020, passed by Sub-Divisional Officer (S.D.O.), Nanded, confirming the Mamlatdar's order dated 8/6/2020.

2. The petitioner is owner of land Gut No.130. The

land admeasures 3 Hectors 91 R. The respondent No.1 is owner of 1.5 acres of land in Gut No.127. According to the respondent, there existed a cartway through the land belonging to the petitioner to approach his land Gut No.127. In the recent past, the petitioner blocked the said way. The respondent No.1, therefore, approached the Mamlatdar by preferring an application dated 20/8/2014. The said application was treated as one under Section 5(2) of the Act. The Mamlatdar paid visit to the site and passed order dated 8/9/2014. The petitioner approached the Sub-Divisional Officer, who confirmed the said order. The petitioner had, therefore, to approach this Court in Writ Petition, being W.P. No.919/2015. The said Writ Petition was allowed vide order dated 15/12/2017. the orders impugned therein were set aside on the ground that the said proceedings were held without serving notice thereof to the petitioner. The Mamlatdar, therefore, re-heard the application after giving the petitioner opportunity of hearing. He paid visit to the land on 17/1/2020. A spot panchanama was drawn. On hearing the parties, namely the petitioner and the respondent No.1, the Mamlatdar passed the impugned order dated 8/6/2020, directing the petitioner to clear the disputed way by removing the obstruction created therein. The Sub-Divisional Officer

affirmed the said decision. The petitioner is, therefore, before this Court.

3. Shri P.R. Katneshwarkar, learned counsel for the petitioner would submit that, there did not exist a way/ road through the land Gut No.130. The Mamlatdar has granted an altogether a new way. Passing an order granting a new way is beyond Mamlatdar's jurisdiction under Section 5(2) of the Act. According to him, the respondent No.1 has an alternative way. The respondent No.1 wants to force his way through the middle of the land Gut No.130. The same would affect the petitioner's right to enjoy the land peacefully and without obstruction of anyone. A map was shown to this Court with a view to make out a case of existence of an alternate way. The learned counsel, therefore, urged for setting aside the impugned orders.

4. Mr. A.B. Shinde, learned counsel for respondent No.1 would, on the other hand, submit that, both the authorities below have given concurrent finding. In exercise of writ jurisdiction, no interference is called with the impugned orders. Learned counsel took me through some evidence and the judgment in Civil Suit (Regular Civil Suit No.50/2014).

5. The Mamlatdar entertained the application preferred by respondent No.1 as one under Section 5(2) of the Act. He paid visit to the site on 17/1/2020 and drew the spot panchanama. Although there is no entry in the 7/12 extract of the land Gut No.130, to indicate existence of the disputed way therein, the Mamlatdar, on spot inspection, found existence of 10 ft. wide and 800 ft. long way from the main Ardhapur – Tamsa Road towards land Gut No.127. He also found the respondent No.1 to have been making use of the said way. Ahead of the land Gut No.127 there is land of respondent No.1 at about 800 ft. The Mamlatdar found the respondent No.1's land to have been kept uncultivated for want of a road/ way to negotiate the same. The Mamlatdar found that the way he found in existence at the site must have been leading further up to the land of the respondent No.1. He further found that the said portion of the way was brought under cultivation by the petitioner. The Mamlatdar gave a finding of fact about existence of the disputed way. The Sub-Divisional Officer, in exercise of revisional jurisdiction, affirmed the finding recorded by the Mamlatdar.

6. Moreover, the petitioner filed a civil suit against

the respondent No.1 for simplicitor injunction. It is R.C.S. No.50/2014. The contention of the petitioner/ plaintiff in the said suit is that, there exist no way through his land. The respondent No.1/ defendant in the said suit was trying to force his way through the said land. The Civil Court dismissed the suit on merits. The learned Civil Judge came to the conclusion as to existence of the way through the land Gut No.130 belonging to the petitioner herein. An appeal is said to have been pending against the judgment and decree passed in R.C.S. No.50/2014. The rights of the parties would be crystalised therein. Suffice it to say that in the aforesaid factual backdrop, no interference is warranted with the orders impugned in this Writ Petition.

7. The petition, therefore, fails. The same is dismissed.

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

fmp/-