

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

WRIT PETITION NO.1108 OF 2021

Murlidhar s/o Sandu Savale,
Age : 84 years, Occu: Agriculturist,
R/o At Post. Bouddh Nagar, Pimpalgaon
(Bk) (Hareshwar),
Taluka – Pachora, District Jalgaon.

... PETITIONER

VERSUS

- 1) The State of Maharashtra,
through its Secretary, Revenue and
Forrest Department, Mantralaya,
Mumbai-32.
- 2) The Sub Divisional Magistrate
Pachora, Dist. Jalgaon.
- 3) The Tehsildar Pachora,
Tal. Pachora, Dist. Jalgaon.
- 4) Magan Baburao Sonawane,
Age : 66 years, Occ : Agriculturist,
R/o. Pimpalgaon (Bk) (Hareshwar),
Taluka-Pachora, Dist- Jalgaon.

... RESPONDENTS

...
Advocate for Petitioner : Mr. B.S. Deshmukh
Advocate for Respondent Nos. 1 to 3 : Mr. P.N. Kutti
Advocate for respondent No.4 : Mr. V.B. Patil
...

CORAM : MANGESH S. PATIL, J.

Reserved on : 21.08.2021

Pronounced on : 24.08.2021

JUDGMENT :

Heard. Rule. The Rule is made returnable forthwith. The learned AGP for the respondent Nos. 1 to 3 and learned advocate Mr. Patil

for the respondent No.4 waive service. The learned advocate Mr. Patil for respondent No.4 files a reply which is taken on record. At the request of both the sides, the matter is heard finally at the stage of admission.

2. The petitioner is the original defendant in a proceeding before respondent No.3 Tahsildar initiated by the respondent No.4 under the Provisions of Section 5(2) of the Mamlatdar's Courts Act, 1906. He is impugning the judgment and order passed by the respondent No.2 Sub-Divisional Officer dated 20.12.2018 whereby he allowed the Revision of the respondent No.4 under Section 23(2) of that Act and quashed and set aside the judgment and order of the respondent No.3 dated 26.11.2018 dismissing the Suit of the respondent No.4 and decreed it.

3. The respondent No.4 filed the Suit with the averments that he has purchased the land Gat No.1253. The Petitioner is the owner of the land Gat No.1259. A 15 Are portion of the petitioner's land was acquired by the Government for laying a water canal. Since the date of purchase in the year 1990 he has been using a way to approach his land along this water canal. However, the petitioner obstructed his way by destroying it and therefore he prayed for removal of obstructions as contemplated under Section 5(2) of the Mamlatdar's Courts Act.

4. The petitioner contested the Suit. He did not dispute the ownership of the respondent No.4 but denied any way being in existence under use of respondent No.4 through his land Gat No.1259.

5. The learned Tahsildar inspected the spot, conducted a

Panchanama and after hearing both the sides dismissed the Suit which order has been quashed and set aside by the respondent No.2 by the impugned order.

6. The learned advocate for the petitioner would submit that the order passed by the respondent No.2 is without any evidence. He has also not quoted any reasons as to why the conclusion drawn by the respondent No.3 was perverse and illegal. In fact the impugned order is not an order in the eye of law. It is absolutely devoid of any reason. As against this the respondent No.3 had personally visited the spot and had specifically noted about not having seen any sign of existence of any cart way as is being claimed along the water canal. There was no reason, therefore, to topple such a reasoned order and in the absence of any reason to justify such contrary view, the impugned judgment and order is liable to be quashed and set aside and the one passed by the respondent No.3 deserves to be restored.

7. The learned advocate for the respondent No.4 Mr. Patil would submit that there is ample material to draw inference regarding existence of a cart way which the respondent No.3 had overlooked. There is no alternate way available to the respondent No.4's land which is sufficient to indicate that there must have been some way for him to approach his land. He has been claiming a way along the water canal and the petitioner cannot claim any right in the portion of 15 Are acquired from his land for laying the canal. He would further submit that the respondent No.2 rightly noticed that at the time of Panchanama the land of the petitioner was ploughed

whereas the land of the respondent No.4 was not ploughed, meaning thereby that he was unable to cultivate his land. The learned advocate would further submit that there is a Dargah in existence at the East-South corner of respondent No.4's land and the people visiting the Dargah have been using the disputed way. He would therefore submit that the view taken by the respondent No.2 in the impugned judgment and order is clearly borne out from the evidence and the petition may be dismissed.

8. I have carefully considered the rival submissions and perused both the orders and the papers. Needless to state that by virtue of the powers conferred under Section 5 a Mamlatdar is empowered to inquire into and remove any obstruction. The proceeding is expected to be in the form of a Suit. It is therefore quite apparent that the power conferred under this provision is a *quasi judicial* power. Needless to state that the parties are entitled to lead evidence to substantiate their contentions. It was therefore absolutely necessary for the respondent No.4 to have substantiated his claim regarding existence of the way by leading some cogent and convincing evidence. Accordingly in support of his claim he filed affidavits of the owner of land Gat No.1252 which is adjacent to his land from North and the owner of the land Gat No.1256 which situate to the South of his land. He has also placed on record the copy of draft award where under which 15 Are portion from the petitioner's land Gat No.1259 was acquired in the year 1979 for laying a water canal.

9. As against this the petitioner has also filed an affidavit of a lady

stating that the land Gat No.1253 was her ancestral land which was sold by her sister-in-law to the respondent No.4's father. She denied existence of any such cart way being claimed by the respondent No.4. The petitioner has also filed affidavit of the owner of land Gat No.1233 which situate to the South of his land Gat No.1259 similarly denying existence of the disputed way.

10. It is thus apparent that it was mainly a matter of oath against oath. Obviously the better piece of evidence that was brought on record during the course of hearing of the suit was in the form of a spot inspection conducted by the respondent No.3 evidenced by the Panchanama. It is after hearing both the sides and by referring to this Panchanama that he had dismissed the Suit observing that there were no signs of any way noticed during inspection. Pertinently, he pointed out that on the East-West northern side Bandh of the petitioner's land Gat No.1259, along which the respondent No.4 has been asserting existence of a way three trees were found. By drawing an inference that if at all any way has been in existence as is being claimed, the appearance of the trees along the same way is sufficient to refute the assertion of the respondent No.4. As can be appreciated, apart from the affidavits and counter affidavits, this is the only piece of evidence that was available on the record before the respondent No.3 and he had dismissed the Suit relying upon.

11. Obviously, since the respondent No.2 was exercising a revisional power under Section 23(2) of the Mamlatdar's Courts Act, it was imperative

for him to have demonstrated as to how the inference drawn by the respondent No.3 was perverse, arbitrary or capricious. However, by reproducing the contents of the Panchanama conducted by the respondent No.3, in one line, by mentioning that the land of the petitioner was found ploughed but the respondent No.4's land was not so ploughed, the respondent No.2 has quashed and set aside the judgment and order of the respondent No.3.

12. It is suffice to note that going by the contents of the Panchanama conducted by the respondent No.3, there was nothing to demonstrate any perversity or arbitrariness in his appreciating the facts, circumstances and the material and none has been demonstrated in the impugned order.

13. It is important to note that the lands of the petitioner and the respondent No.4 are not adjacent to each other, land Gat No.1258 and 1257 situate between these two lands. If at all the respondent No.2 has been using any portion of the petitioner's land, he must have been required to crossover these two lands Gat Nos.1257 and 1258 to enter his land Gat No.1253. The owners of these lands are not coming forward to assert existence of any such way which obviously could have been used even by them for entering into their respective lands considering the topography. If this be so, apart from the reasoning given by the respondent No.3, this is another circumstance which seems to have been overlooked by the respondent Nos.2 and 3 while appreciating the facts and circumstances.

14. In any case, merely because petitioner's land was found ploughed but not that of the respondent No.4 one cannot jump to the conclusion that the latter has been unable to cultivate his land because of any obstruction created by the petitioner.

15. It is under these circumstances, in my considered view, when the decision of the respondent No.3 was based on some objective material and his own inspection of the spot, there should have been something more for the respondent No.2 to arrive at a contrary conclusion. The impugned order does not demonstrate existence of any such material before the respondent No.2 which could have enabled him to take a different view. The jurisdiction of an authority exercising a revisional power is limited and the impugned order does not demonstrate about the respondent No.2 having borne in mind such limitations.

16. In any case, the impugned order is clearly erroneous and illegal and is liable to be quashed and set aside.

17. The Writ Petition is allowed. The impugned order passed by the respondent No.2 is quashed and set aside and the one passed by the respondent No.3 is restored.

(MANGESH S. PATIL, J.)