

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.11236 OF 2017

Shankar s/o Vishwanath Pathak,
Age : 75 years, Occu. Agri.,
R/o Satwad, Tq. Pathardi,
District Ahmednagar

PETITIONER

VERSUS

1. The State of Maharashtra,
through its District Collector,
Ahmednagar
2. The Sub-Divisional Officer,
Pathardi Division, Pathardi,
Dist. Ahmednagar
3. The Tahsildar,
Pathardi, Tq. Pathardi,
Dist. Ahmednagar
4. Minakshi Bhivsen Pathak,
Age : Major, Occu. Agri.,
R/o Satwad, Tq. Pathardi,
Dist. Ahmednagar
5. Ram Hari Pathak (Died)
through its legal heirs
Satish Babasaheb Pathak,
Age : Major, Occu. Agri.,
R/o Satwad, Tq. Pathardi,
Dist. Ahmednagar

RESPONDENTS

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Mr. Arvind G. Ambetkar, Advocate for the petitioner
Mr. K.B. Jadhavar, A.G.P for respondent Nos.1 to 3/State
Mr. V.D. Sapkal, Senior Advocate instructed by Mr. A.B. Jagtap,
Advocate for respondent Nos.4 and 5

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CORAM : MANGESH S. PATIL, J.

DATE : 25.10.2021

ORAL JUDGMENT :

Heard.

2. Rule. The Rule is made returnable forthwith. The learned A.G.P waives service for respondent Nos.1 to 3. The learned Senior Advocate Mr. V.D. Sapkal, instructed by Mr. A.B. Jagtap, Advocate waives service for respondent Nos.4 and 5. At the request of the parties, the matter is heard finally at the stage of admission.

3. In this petition under Article 227 of the Constitution of India, the petitioner is taking exception to the judgment and order passed by respondent No.3 – Tahsildar in a suit filed under Section 5 (2) of the Mamlatdar's Courts Act, 1906 ("the Act", for short), on a plaint instituted by respondent No.4, as also the judgment and order passed by respondent No.2 – Sub-Divisional Officer in the revision preferred by him under Section 23(2) of the Act, dismissing it and upholding the order of the Tahsildar.

4. Respondent No. 4 submitted the plaint (Exh-A), asserting that she is the owner in exclusive possession of the land Gat No.166/1. Her

sister-in-law Gayabai owned and possessed the land Gat No.166/2, which is to the south of her land. Gayabai has created obstruction to the customary way to approach her land Gat No.166/1 and requested respondent No.3 Collector to remove the obstruction. The petitioner was arrayed as defendant No.2. He happens to be the husband of Gayabai. He contested the suit by his written statement. He specifically denied existence of any customary way as is being claimed by the petitioner. No such way was found to be in existence when respondent No.3 Tahsildar conducted inspection and alternate way was found to be in existence for the use of respondent No. 4 and other 9 to 10 agriculturists which originated from land Gat No.169/2 and proceeded right upto the river.

5. Respondent No.3 conducted necessary hearing, even a panchanama (Exh-B) was drawn and by the impugned order, he held that the suit was within limitation. There was a customary way in existence as claimed by respondent No.4 and that it was obstructed by the petitioner. He directed the obstruction to be removed and injuncted the petitioner from causing any obstruction. The learned Sub-Divisional Officer has confirmed the judgment and order of the Tahsildar.

6. The learned Advocate for the petitioner, referring to several decisions of this Court, specifically submits that the proceeding under Section 5(2) of the Act has to be in the form of a suit. The provisions contained in Section 7 and subsequent provisions clearly demonstrate that

the proceeding should have all the drappings of a suit. Giving a complete go-bye to such mandatory provisions, an informal complaint without any affirmation and evidence has been conducted and decided as if it was a suit.

7. The learned Advocate would also demonstrate that the plaint (Exh-A) does not disclose any cause of action much less within a period of six months next before its filing and therefore, it was completely time barred. Both the authorities below have overlooked such important aspect, which goes to the jurisdiction of the authorities. He would further submit that the Tahsildar has made perverse and arbitrary observations and the learned Sub-Divisional Officer has failed to undertake any objective scrutiny of all the material that was available on the record. The judgments of the authorities below being perverse, arbitrary and capricious, are not sustainable in law and may be quashed and set aside. He would rely upon the decisions of this Court in the following cases:

- (i) ***Bhagwat Namdeo Nirmal & Another Vs.
The Sub-Divisional Officer & Others;
Writ Petition No.10346/2012, decided on 18.03.2013***
- (ii) ***Vishnu Sukhdev Ghanvat & Others Vs.
Collector, Ahmednagar & Others;
2017(1) Mh.L.J. 811***
- (iii) ***Bhalchandra s/o Gorakh Patil Vs.
The State of Maharashtra & Others;
Writ Petition No.4245/2018, decided on 7.6.2019***

8. The learned A.G.P supports both the judgments and orders.

9. The learned Senior Advocate Mr. Sapkal for the contesting respondents also supports both the judgments and orders. He submits that it is a case of continuing cause of action so long as the obstruction continued. It would give rise to successive cause of actions and therefore, the suit was clearly within limitation.

10. The learned Senior Advocate would then submit that the authorities below have undertaken detailed scrutiny to trace out existence of a cart-way. The panchanama clearly demonstrates the way and the authorities have taken a plausible view regarding existence of a cart-way and its obstruction. There is no perversity or arbitrariness.

11. A bare perusal of the scheme of the Act clearly demonstrates that a Mamlatdar has been empowered to conduct proceeding in the nature of a suit to remove or cause to be removed any impediment inter alia, which affects the use of any agricultural land. More importantly, the provisions of Section 7 onwards further demonstrate that even if an informal petition can be treated as a plaint, the Mamlatdar can call upon the plaintiff to subscribe and verify it in the open court. It also requires him to make such an endorsement on the plaint. More importantly, Section 12 speaks about the consequences of non-compliance of the earlier provisions of Sections 7 to 11 and enables him to reject the plaint, if it is not within limitation or if the plaintiff fails to make the statement on oath or the dispute is not pertaining to the issues covered by Section 5. The

subsequent provisions confer upon him the powers analogous to the powers of Civil Court for calling witnesses, recording testimonies, etc.

12. Even this court in the aforementioned proceedings has emphasized the importance of these provisions and has even held those to be mandatory.

13. Giving a complete go-bye to such mandatory provisions of the Act, the authorities below seem to have conducted the proceedings in an arbitrary manner. Though Section 8 enables informal complaints to be entertained as plaints, the complaint (Exh-A), which is a similarly filed informal complaint of respondent No.4, there is no oath or affirmation subscribing to it. Besides, it also does not disclose as to exactly when the alleged obstruction was created. It was imperative for respondent No. 4 to have come out with a specific stand disclosing the exact date on which the obstruction was created. In the absence of which, as has been held in the aforementioned decisions of this Court, there would be a reasonable doubt as to the cause of action having occurred within a period of six months next before filing of the plaint. In the absence of which, one can easily conclude that there is a serious error committed by the authorities below in entertaining the suit.

14. The submission of learned Senior Advocate for respondent No. 4 that it is a continuing cause of action is not legally tenable. When the provisions of Section 5 (3) of the Act contains a wording that no suit shall

be entertained by the Mamlatdar's Court unless it is brought within six months from the date on which the cause of action arose and more importantly when sub-section (4) specifically lays down that the cause of action shall be deemed to have arisen on the date on which the obstruction or impediment or disturbance is first commenced, the submission of the learned Senior Advocate is not legally tenable.

15. Again, the panchanama (Exh-B), which forms a basis for the authorities to conclude existence of some way and its obstruction by the petitioner, no way seems to be in existence as is being claimed by respondent No.4. It only reads that the way could be seen in existence only upto a specific point where Kushababa temple situates and not beyond that. The observation of respondent No.3 Tahsildar in relation to point No.3 in the impugned judgment that the panchanama demonstrates existence of an ancient way, is clearly perverse and arbitrary. He has simply observed that the panchanama and his inspection and documents revealed existence of such ancient way. The observations are certainly perverse and arbitrary and are not sustainable in law.

16. The illegality seems to have perpetuated by the learned Sub-Divisional Officer. After wasting few pages in referring to the rival claims, in few lines he has jumped to the conclusion that the decision arrived at by the respondent Tahsildar was legal and correct, without independently indulging in any scrutiny of the evidence and particularly the

aforementioned facts and circumstances.

17. Having considered all the aforementioned facts and circumstances and the material that was available before the authorities below, it is quite clear that they have decided the suit and the revision without bearing in mind the provisions of the Act and sans any concrete evidence to substantiate the stand of respondent No.4. The impugned orders, therefore, being perverse and arbitrary are liable to be quashed and set aside.

18. The Writ Petition is allowed. The impugned orders are quashed and set aside. The Rule is made absolute in above terms.

[MANGESH S. PATIL]
JUDGE