

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3158 OF 2020

Dilip Manik Kashid & Others .. Petitioners
v/s.
Pandurang Shankar Gaikwad & Others .. Respondents.

Mr. Hrishikesh S. Shinde, for the Petitioners.
Ms. Vaishali S. Nimbalkar, AGP for the Respondent-State.

CORAM: G. S. KULKARNI,J.
DATED : 14th SEPTEMBER, 2021.

PC:-

The Petitioners who are the original Respondents in proceeding initiated by Respondent Nos. 1 to 5 before the Court of Tahsildar, Malshiras (for short **“the Mamlatdar”**) under the provisions of Section 5(2) of the Mamlatdar Court Act, 1906 (the ‘Act’), have filed this Petition, challenging the order dated 23rd July, 2019 passed by the Dy. Collector, Malshiras, Akluj, rejecting Revision Application No.20 of 2018 filed by them under Section 23(2) of the said Act, against an order dated 25th June, 2018 passed by the Mamlatdar.

2 The learned Counsel for the Petitioners has argued that the dispute between the Petitioners and the Respondent Nos.1 to 5 is with regard to an irrigation canal and the road/path passing through Gat No.646 (for short **“the said land”**). According to him, the case of

Respondent Nos. 1 to 5 before the Mamlatdar was that the petitioners were destroying and/or obstructing the said irrigation canal and the pathway of Respondent Nos. 1 to 5, and accordingly had prayed for an appropriate order to be passed by the Mamlatdar, removing such road, obstruction created by the Petitioners. On such proceedings, Mamlatdar passed an interim order dated 25th June, 2018, which reads thus:

“ORDER

The claim filed by the Applicant to the effect the the Respondent, by taking objection in respect of the land bearing Gat No.646, had destroyed the earlier Canal-Strip used for to and fro movement towards the applicant's land bearing Gat No.664/1A, 644/1B, 633/2B, 642/1 and 641/2 situated at village Gursale, Tal. Malshiras is hereby allowed. The perpetual warning is hereby given to the Defendant to the effect that he himself or through his servants or any other persons, should not cause any hindrance to the road under the 'vahiwat' (i.e. management) of the plaintiff. This order should be implemented after the Appeal period is over.”

3. The Mamlatdar has observed in the above order that the petitioners though were duly served though the Talathi and although were present at the inspection undertaken on 21 March, 2018, they failed to remain present on any of the dates when the proceedings were listed before him, nor a say/reply was filed by the petitioners. The Mamlatdar accordingly passed the order ex-parte to the petitioners.

4. The Petitioners, being aggrieved by the order passed by the

Mamlatdar, approached the Dy. Collector in Revision Application No.20 of 2018, who has passed the impugned order after hearing the parties, rejecting the petitioners' Revision Application and confirming the interim order passed by the Mamlatdar.

5. The learned Counsel for the Petitioners in assailing of impugned order, at the outset, has submitted that grave prejudice is being caused to the Petitioners by the impugned order, inasmuch as, the petitioners have not obstructed the respondent's user of land on Gat No.646, as alleged by Respondent Nos. 1 to 5. According to him, it is the petitioners' case that respondent Nos. 1 to 5 could not have claimed any right either in respect of the irrigation canal or for the right of way from such land. His primary contention is that proceeding initiated by respondent Nos. 1 to 5 before the Mamlatdar under section 5(2) of the Act, which were instituted on 5 February, 2018 were barred by limitation, inasmuch as according to him, respondent Nos. 1 to 5 were well aware of the panchnama and the alleged obstructions created by the Petitioners, way back in January, 2015. It is submitted that the proceedings initiated by respondent nos. 1 to 5 before the Mamlatdar were filed after a period of almost three years, when the limitation to institute such proceedings as prescribed by Mamlatdar Court Act, 1906 was six months from the accrual of the cause of action. Thus, according to him, the proceedings before the Mamlatdar being barred by

limitation, the Mamlatdar could not have passed the impugned order. It is submitted that all these aspects of the matter have been completely overlooked by the Dy. Collector while rejecting the Revision Application of the petitioners.

6. Having heard the learned Counsel for the parties and having perused the order dated 25th June, 2018 passed by the Mamlatdar and the impugned order dated 23rd July, 2019 passed by the Dy. Collector, Malshiras as also the petitioners' Advocate reply dated 7 February, 2015 to the notice of the Branch Officer of the Irrigation Department, in my opinion, prima facie it appears that the petitioners had caused obstruction to the respondents' user of the land, water and the pathway on Gat no. 646. The respondent nos. 1 to 5 accordingly had approached the Mamlatdar's Court seeking relief against such obstruction. It also appears to be quite clear that the Mamlatdar passed the order dated 25 June, 2018, as the petitioners, despite notice of the proceedings, failed to appear before the Mamlatdar's Court, against which the petitioners preferred a Revision Application before the Deputy Collector. The learned Counsel for the petitioners is correct in his contention that one of the ground which was raised by the petitioners in the revision application was with regard to the maintainability of the proceedings before the Mamlatdar on the ground of limitation. However, it is not clear from the

record as to whether the said issue was argued by the Petitioners before the Dy. Collector. The petitioners have also not raised a specific ground in the present petition to this effect that they had argued such ground before the Deputy Collector in the Revision proceedings.

7. In my opinion, no case is made out by the petitioners for interference in this proceeding for more than one reason. Firstly, the record indicates that the petitioners were aware about the proceedings instituted by respondent nos.1 to 5 before the Mamlatdar. It is in pursuance of such proceedings an inspection of the disputed land was held and the panchanama was prepared. This clearly indicates that the petitioners had a clear notice of the proceedings instituted by respondent nos.1 to 5 against them before the Mamlatdar Court. This apart, there is a clear finding of fact that the notices of the proceedings were served on the petitioners. The petitioners at no point of time have denied receipt of such notices of the proceedings. The Mamlatdar's Court had adjourned the proceedings from time to time. The petitioners, however, for the reasons best known to them neither appeared in the proceedings nor have filed any reply/written statement to the plaint filed on behalf of respondent nos.1 to 5. Ultimately on this backdrop, the learned Mamlatdar proceeded to adjudicate the suit ex-parte to the petitioners. In these circumstances, it cannot be said that the petitioners had no notice of the

proceedings when they had themselves permitted the proceedings to go ex-parte against them.

8. In the revision proceedings filed by the petitioners, none of the grounds as urged by the petitioners, impressed the revisionary authority/ Deputy Collector, and he accordingly rejected the petitioners' revision application. The sole contention now sought to be raised by the learned Counsel for the petitioners is that the ground that the suit of respondent nos.1 to 5 was barred by limitation was raised in the revision application and the same ought to have been considered. I am not impressed by this submission. Perusal of the grounds in the revision application to that effect does not raise any confidence in the petitioners' contention that the petitioners were at all serious to assert issue of limitation. This more particularly when issue of limitation is a mixed question of law and fact. Moreover, there is no ground whatsoever pleaded in the petition that the petitioner in fact had argued the issue of limitation before the Deputy Collector in the revision proceedings and that having raised such ground, the Deputy Collector had failed to consider such ground. Certainly, such is not a case of the petitioners on record. In these circumstances to grant an opportunity to the petitioners by directing the Deputy Collector to have a denovo consideration of the proceedings, would amount to condoning the petitioners' negligent conduct before the authorities below, and more

particularly, the conduct in which the petitioners have acquiesced. An order of such nature cannot be passed in exercise of the writ jurisdiction in the present facts.

9. For the above reasons, the petition is devoid of merits. It is accordingly rejected. No costs.

(GIRISH S. KULKARNI, J.)

(Order is corrected as per speaking to the minutes of the order dt. 20 September 2021.)