

Urmila Ingale

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 3411 OF 2019

Shri Gurupad Rama Nhavi and anr.Petitioners
Vs.
Shri Gangadhar Gurappa Vadare and ors. Respondents

Mr.Ashok B. Tajane, for the Petitioners.
Mr.R.S.Alange, for Respondents No.1 & 2.
Mrs.M.S. Bane, AGP for the Respondent – State.

CORAM : M. S. KARNIK, J.

DATE : 10th FEBRUARY, 2021

P.C. :

. Heard learned Counsel for the Petitioners.

2. The Petitioners filed an application under section 5 of the Mamlatdar's Courts Act, 1906 (for short 'the said Act') seeking removal of obstruction. According to him, there was road in existence. The Respondents denied the contentions of the Petitioners that there was road in existence.

3. Learned Tahsildar allowed the application made by

the Petitioners under section 5 of the said Act. The Respondents filed Revision before the Sub-Divisional Officer (for short 'SDO') under section 23(2) of the said Act. The Revision came to be allowed by SDO. Against the order passed in Revision, the Petitioners have approached this Court.

4. It is the contention of the learned Counsel for the Petitioners that the Revision has been allowed only on technicalities and there were some defects in the application made before the Tahsildar. In the submission of the learned Counsel, SDO should have granted an opportunity to the Petitioners to remove the defects and/or make an application for amending the original application made under section 5 instead of allowing the Revision in its entirety in the interest of justice.

5. Learned Counsel for the Respondents supported the order passed by the Revisional authority. He submits that the pleadings in the application made under section 5 are as vague as it can be. He further submitted that the Petitioners did not have any cause of action to file the application under section 5 of the said Act. Moreover, he would submit that SDO is correct in coming to the conclusion that the statements are recorded by

Talathi whereas the requirements of law is that the enquiry has to be conducted by Tahsildar. He therefore opposed the Petition.

6. Heard learned Counsel for the parties. The Petitioners succeeded before the Tahsildar and application came to be allowed. However, SDO while allowing the Revision of the Respondents has primarily based his order on the defective application made by the Petitioners before Tahsildar. Moreover, even the SDO has observed that the enquiry conducted by Talathi was impermissible as enquiry has to be conducted by Tahsildar under the provisions of the Act. In such circumstances, in my opinion, instead of allowing the Revision, SDO could have remitted the matter back to the Tahsildar allowing the Petitioners to make appropriate application for amendment of the application made under section 5 of the said Act.

7. The impugned order therefore deserves to be quashed and set aside. Hence, the following order.

ORDER

i) The impugned order passed by the SDO as well as order passed by Tahasildar are quashed and set aside.

ii) The matter is remitted back to the Tahsildar for reconsidering the application made under section 5 of the said Act afresh on its own merits and in accordance with law.

iii) The Petitioners are at liberty to move an application for amendment of the application which shall be considered on its own merits and in accordance with law.

iv) Needless to mention that the parties are permitted to lead evidence before Tahsildar in the proceedings i.e. application made under section 5 of the said Act.

(v) Parties to appear before Tahsildar on 22/02/2021 at 11.00 a.m. whereafter further schedule of the hearing may be fixed.

(vi) Tahsildar is requested to decide the Application expeditiously.

vii) All contentions on merits are kept open.

viii) I may not be understood to have expressed any opinion on

merits of the controversy.

8. Writ Petition is disposed of.

(M.S.KARNIK, J.)