

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 interim 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 interim 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. Be that as it may, in my opinion, these proceedings have arisen from an ex-parte interim order passed by the Mamlatdar, hence it would be in the interest of justice that the petitioners approach the Mamlatdar and oppose the proceedings filed by respondent nos. 1 to 5 on all grounds available to them in law including on the ground of limitation. Limitation is admittedly a mixed question of law and fact which will have to be decided on the basis of the pleadings and evidence as would be placed by the parties before the Mamlatdar. Ordered accordingly.

8. All contentions of both the parties are kept open.

9. Petition is, accordingly disposed of in the above terms. No order as to costs.

10. Needless to observe that the interim order shall continue to operate and shall be subject to the further orders which may be passed by the learned Mamlatdar.

(GIRISH S. KULKARNI, J.)