

Prajakta Vartak

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.6812 OF 2018**

Shri. Rajendra Pandurang Darekar & Ors. **...Petitioners**

V/s.

Shri. Ramchandra Sarjerao Vidhate & Ors. **...Respondents**

Mr. R. D. Suryawanshi for Petitioners.

Mr. Vaibhav Gaikwad for Respondent Nos. 1 to 15.

Mr. S. D. Rayrikar, AGP for State/Respondent Nos.16 & 17.

CORAM : G. S. KULKARNI, J.

DATE : NOVEMBER 22, 2021

PC :

1. Heard learned counsel for the petitioners, learned counsel for respondent nos.1 to 15 and the learned AGP for the State.

2. The petitioners, being aggrieved by the concurrent orders as passed against the petitioners in the proceedings initiated under Section 5 of the Mamlatdars Court Act, 1906 (for short, “the Act”), have filed the present petition.

3. Respondent nos.1 to 15 invoked the jurisdiction of Mamlatdar under Section 5 of the Act, by instituting a plaint on 19 December, 2015 alleging that the petitioners have obstructed the road described as a road by the side of Gat No.32 [Old Survey No.37(2)] from South to North to the extent of about 300 meters. In paragraph 2 of the plaint, details of the obstructions

were set out. It was also set out that all the farmers had approached the Tehsildar on 15 May, 2015 making a request that the obstruction of the said road as created by the petitioners be removed. The Circle Officer accordingly held meetings on 11 May, 2015, 3 June, 2015 and 3 October, 2015, so as to bring about an amicable settlement as it was almost a mass grievance. Thereafter further meetings were held on 15 October, 2015 and 18 November, 2015, however as an amicable resolution of such disputes could not be arrived between the parties, the plaint in question under Section 5 of the Act was instituted by respondent nos.1 to 15 on 19 December, 2015 before the Court of Tehsildar/Mamlatdar. The petitioners appeared before the Tehsildar in response to the service of the plaint and by an application dated 10 March, 2016 raised an objection under Section 7 of the Act that a plaint as instituted by respondent nos.1 to 15 did not comply with the requirements specified in clauses (a) to (f) of Section 7 of the Act. On 18 October 2016, respondent nos.1 to 15 filed their reply inter-alia objecting to such application as moved on behalf of the petitioner, thereby contending that there was a complete compliance of the requirements of the provisions of Section 7. They pleaded that the application as filed by the petitioners was misleading and false. Respondent nos.1 to 15 reiterated that the approved map clearly showed an open road, and hence it was stated that the petitioners had blocked the road. In fact a perusal of such

application makes it clear that these objections were too general in nature and totally unclear as to in which manner any of the sub-clauses of Section 7 were not complied by respondent nos.1 to 15.

4. On 20 December, 2016, the petitioners filed their written statement. It can be seen from the written statement that the petitioners did not, at all, deal with the contentions as raised by respondent nos.1 to 15 in the plaint and much less the specific averments as made in paragraph 2 wherein respondent nos.1 to 15 had described in detail the observations. In fact, the petitioners did not dispute the specific contentions as urged on behalf of Respondent nos.1 to 15 on the obstruction as created by the petitioners. The authority could have very well observed that the case of Respondent nos.1 to 15 had remained uncontroverted.

5. In the above circumstances, after having invited a panchanama in regard to the site inspection which was held on 10 August, 2016 and considering the rival contentions, the Tehsildar setting out detailed reasons by an order dated 30 September, 2017, allowed the suit filed by respondent nos.1 to 15, categorically observed that a panchanama/inspection was called for and it has clearly demonstrated that there was obstruction caused by the petitioners. The Tehsildar recorded that the map indicated that there

was a road which was available and was obstructed by the petitioners. He also observed that earlier steps were taken by respondent nos.1 to 15 to resolve the disputes by approaching the Circle Officer, Kudal on 15 December, 2015, he also observed that after such settlement proceedings were initiated, further obstruction was created by the petitioners on 19 December, 2015, which ultimately made respondent nos.1 to 15 to institute proceedings under Section 5 of the Act.

6. The petitioners being aggrieved by the orders passed by the Tehsildar, approached the Sub-Divisional Officer (SDO), Satara in a revision under Section 23(2A) of the Act. By the impugned order passed by the SDO, the petitioners' revision has been rejected.

7. Mr. Suryawanshi, learned counsel for the petitioners in assailing the impugned orders as passed against the petitioners, has limited submissions. It is his first submission that the plaint as instituted by respondent nos.1 to 15 had failed to disclose any cause of action. The second submission is that the authorities below ought to have held that the proceedings initiated by respondent nos.1 to 15 were barred by limitation. Lastly he would submit that the averments of obstruction were not clear so that the authorities below should accept the contentions as raised by respondent nos.1 to 15.

8. On the other hand, learned counsel for respondent nos.1 to 15 would submit that the learned Tehsildar has recorded detailed findings which take into consideration that there is approved map which showed an existing road. This fact according to him, had remained uncontroverted that such road was obstructed by the petitioners. He submits that it is also not in dispute that in regard to the obstruction created by the petitioners a panchanama dated 10 August, 2016 was placed on record of the proceedings before the Tehsildar. He submits that the panchanama ought to have formed part of the record, however it has been suppressed by the petitioners. In regard to the petitioners' contention that such proceedings as instituted by respondent nos.1 to 15 were time barred, learned counsel for respondent nos.1 to 15 would submit that perusal of the written statement filed by the petitioners would clearly show that an objection as to limitation in a manner known to law was never raised before the revisional authority. He lastly submits that as the case of respondent nos.1 to 15 on the obstruction created by the petitioners had remained uncontroverted, the Tehsildar taking into consideration all the materials on record in the facts of the case has appropriately granted relief to respondent nos.1 to 15 and as rightly confirmed by the Revisional Authority. He has therefore prayed for dismissal of the petition.

9. Having heard learned counsel for the parties and having perused the record as also the impugned order, in my opinion, none of the contentions as urged on behalf of the petitioners can be accepted. Firstly in regard to the contention that there was no cause of action for respondent nos.1 to 15 to initiate proceedings under Section 5 of the Act, the same is required to be stated to be rejected, considering the clear averments as made by respondent nos. 1 to 15 in paragraph 2 of the plaint which sets out a clear cause of action for invocation of the jurisdiction of the Mamlatdar under Section 5 of the Act. In fact, there is no denial of the specific case of respondent nos.1 to 15 as pleaded in paragraph 2 of the plaint by the petitioners in the written statement filed by them and on this ground itself, the case of respondent nos.1 to 15 ought to have succeeded.

10. Be that as it may, the Tehsildar has fully followed the procedure in law to adjudicate the proceedings. He has examined the entire material which included the approved map which clearly demonstrated the existing road and all the other materials which also included the inspection report/ panchanama which proved the case of respondent nos.1 to 15 that glaringly an obstruction was created by the petitioners at the objected place thereby stopping the ingress and egress of the farmers/respondent nos.1 to 15. It

also needs to be noted that it is not the case that the grievance of obstruction was raised by one person, but it was a collective grievance of a group of farmers who were adversely affected by the petitioners action of creating obstruction on the right side of way as always available to them. Moreover there was no material whatsoever which has been placed on record by the petitioners to displace any of the contentions as urged on behalf of respondent nos.1 to 15 except the untenable technical pleas as noted above.

11. In so far as the petitioners' contention in regard to the proceedings being barred by limitation are concerned, firstly, it needs to be observed that no such objection was raised before the Tehsildar. Perusal of paragraph 2 clearly indicates that cause of action had accrued to respondent nos.1 to 15 sometime in the month of October 2015 till December, 2015. As the Circle Officer has failed to resolve the dispute amicably it had become necessary for respondent nos.1 to 15 to initiate the proceedings which came to be instituted on 19 December, 2015 which was certainly within the prescribed limitation as provided in Section 5 of the Act. The petitioner however, to improve the case which was not asserted at first in revision, made a lame attempt to raise an issue of limitation in paragraph 6 of the revision application. Perusal of such averments clearly shows that it was a bald

avermment and absolutely hollow, to merely contend that the proceedings were not initiated by respondent nos.1 to 15 within the prescribed limitation. Certainly this limited assertion was not sufficient to meet the requirement of law to succeed on an objection as to limitation, as undoubtedly an issue of limitation would be a mixed question of law and fact. As to how the plaint was barred by limitation was required to be specifically pleaded by the petitioners. Thus the averments as made in paragraph 6 of the revision application cannot be accepted as any valid objection of the petitioners to contend that proceedings were barred by limitation. In any event such contention appears to have been urged by the learned counsel as a mere formality and appears to be an argument in desperation. It is accordingly rejected.

12. Having perused the orders passed by the revisional authority, it is clear that the revisional authority has taken into consideration the case of respondent nos.1 to 15 as also considered all the grounds which have been urged by the petitioners in assailing the order passed by the Tehsildar/ Mamlatdar and considering such material on record, has rightly found no merit in the revision application as filed by the petitioners. In my opinion, considering the detailed reasons as set out by the revisional authority, there is no cause for the petitioners which would deserve interference in the

concurrent findings as recorded against the petitioners by both the authorities below in exercise of the jurisdiction of this Court under Article 226 and 227 of the Constitution of India. The petition hence deserves to be dismissed.

13. Before parting, it needs to be observed that there is also an attempt on the part of the petitioners to suppress a vital material which was against the petitioners, namely the panchanama dated 10 August, 2016. Such panchanama was part of the record before the Tehsildar. It was also part of the record before the revisional authority. Both the authorities have taken into consideration such document. In these circumstances, considering the well settled principles of law that a party invoking the writ jurisdiction ought to have approach the Court with clean hands and suppression of any material would be required to be firmly dealt. Thus, solely on the ground of suppression the petitioners even otherwise would be disentitled for any reliefs on this petition. Hence, the petition cannot be dismissed simplicitor, it is accordingly dismissed with cost of Rs.10,000/- to be deposited by the petitioners with the Kirtikar Law Library, within two weeks from today.

(G. S. KULKARNI, J.)