

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6648 OF 2021

Shantaram Namdev Nagare & Ors. ... **Petitioners**

V/s.

Raju Arjun Dhatrak & Ors. ... **Respondents**

Mr. Kishor Patil i/b. Mr. Pratik B. Rahade, Advocate for the Petitioners.

Mr. Vaibhav D. Kadam, Advocate for the Respondent No.1.

Mr. P. P. Pujari, AGP for the Respondent/State.

CORAM : G. S. KULKARNI, J.

DATE : OCTOBER 12, 2021

PC :

1 Heard Mr. Patil learned Counsel for the petitioner and Mr. Kadam, learned Counsel for the Respondent No.1.

2 The Grampanchayat Hinganvedhe filed a complaint purportedly under Section 5 of the Mamlatdars' Courts Act, 1906, before the Tahasildar Nashik against the petitioners alleging that the petitioners are causing obstruction to the general public by obstructing the approach road. The complaint is one paragraph complaint. It does not give the description of any land on which such obstruction is created. The complaint does not array the petitioners as the defendants. Such a complaint was entertained by the Tahasildar, whereby

an order dated 22 July 2021 has been passed against the petitioners directing the petitioners to remove the encroachment, which was challenged by the petitioner in a revision before the Additional Collector who has dismissed the revision by an order dated 28 September 2021, which is subject matter of challenge in this petition.

3. The petitioners' contention is that there was basic lack of jurisdiction to entertain the nature of the complaint as made under Section 5 of the Mamlatdars' Courts Act. The petitioners' case is that on a plain reading of such complaint, it is impossible to conceive that the authority such as Mamlatdar could exercise jurisdiction when it failed to make out any case against the Petitioners. In these circumstances, the present petition has been filed praying for the following reliefs:-

“(a) Issue an appropriate Writ/Order, to quash and set aside the Order dated 28th September, 2021 passed by the Learned Additional Collector, Nashik Division, Nashik, in VAIHWAT/REVISION/149/2021 and the Order dated 22.07.2021 passed by the Tahsildar, Nashik in No.KUKA/KAVI/410/2021.

(b) Pending the hearing and final disposal of the present Writ Petition, the Order dated 22.07.2021 passed by the Tahasildar, Nashik in No.KUKA/KAVI/410/2021 may kindly be stayed.

(c) Any other further relief that may be deem fit and proper be granted.”

3 Having heard learned Counsel for the parties and having perused the record, it is seen that the order dated 22/07/2021 has been passed by the

Petitioner on an application filed by the Grampanchayat which certainly cannot be said to be any plaint under Section 5 of the Mamlatdars' Courts Act, 1906. On perusal of application dated 17/02/2021 filed by the Grampanchayat, it is seen that there is no description of any Gat number or even the petitioners are not arrayed as contesting defendants. Unfortunately, on such defective application/complaint, Tahsildar proceeded to pass the impugned order directing the petitioners to remove the obstruction created on Gat No.355.

4 Learned Counsel for the respondent No.1 disputes that appropriate proceedings are not filed, it is difficult to accept such contention, on a plain reading of the said complaint which is only of one paragraph with no details whatsoever or against whom such complaint / cause is being persuaded. There is no basic compliance of Section 5 of the Mamlatdars Act, when the grievance is specifically a grievance which requires an adjudication by the Mamlatdar by invoking powers under Section 5 of the Act. Accordingly the impugned order needs to be set aside being passed on a wholly vague and arbitrary complaint. Ordered accordingly.

5 However, this order would not preclude either the respondent No.1 or the Grampanchayat, Hinganvedhe to file proceedings under Section 5 of the Mamlatdars' Courts Act and by arraying the petitioners or such other parties

as the defendants, if any cause of action against the petitioners has arisen if any such complaint is filed, it be decided by the learned Mamlatdar as per Law.

6 All contentions of the respective parties are kept open.

7 Disposed of. No costs.

8 Needless to observe that notice issued by the Circle Officer Mr.Shinde to execute the impugned order shall also be inoperative in view of the impugned order itself being set aside.

(G. S. KULKARNI, J.)

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