

Vidya Amin

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

WRIT PETITION NO. 8798 OF 2021

Jesus Sudhir Lall

... Petitioner

V/s.

Kuljitsingh Gurudevsingh Birdi & Ors.

... Respondents

Mr. Pravin Samdani, Senior Advocate a/w. Mr. Nukul Jain, Nivit Srivastava, Ms. Sneha Patil i/b. Maniar Srivastava Associates for the petitioner.

Mr. A. Y. Sakhare, Senior Advocate a/w. Mr. Girsh R. Agrawal for respondent nos. 1 to 3.

Mr. Mahendra M. Agavekar for respondent no. 6, 7 to 10, 14 & 21.

Ms. A.A. Purav, AGP for the State/respondent nos. 22 and 23.

Mr. M.M. Sathaye i/b. Mr. H.S. Shinde a/w. Sachin Pudaye for respondent nos. 11 to 13, 15, 19, 20.

CORAM : G.S.KULKARNI, J.

DATE : 22 December, 2021

P.C.:

1. The proceedings of the present petition arise under the Mamlatdar's Court's Act, 1906. Respondent nos. 1 to 3 are the plaintiffs, who have invoked the jurisdiction of the Mamlatdar under section 5 of the Mamlatdars' Courts Act against the petitioner and impleading the other adjoining landholders claiming a right of way from the petitioner's land, bearing survey no. 10/8. A plaint under section 5 was presented before the Mamlatdar on 20 August, 2021. The Mamlatdar ordered a panchnama on the same day and issued notice to the defendants therein which includes the petitioner. However, before the panchnama was

received, an interim order came to be passed by the Mamlatdar on 23 August, 2021 directing the petitioner to provide for a right of way to the respondent nos. 1 to 3/plaintiffs. The panchnama later on came to be recorded on 31 August, 2021 and it is stated to be recorded by the Mamlatdar himself. The petitioner, being aggrieved by the interim order passed by the Mamlatdar, approached the Revisional Authority, namely, the Sub-Divisional Officer (SDO) as permissible under section 23 of the Act. By the impugned order dated 5 October, 2021, the SDO has rejected the revision application as filed by the petitioner on the ground that the SDO has no jurisdiction to entertain a revision against an interim order passed by the Mamlatdar. It is in this circumstances, the present petition has been filed making the following prayers:

"a. this Hon'ble Court be pleased to call for the records and proceedings which led to passing of the impugned order dated 23 August, 2021 (Exhibit J hereto) passed in Vahivat Case No. 17 of 2021 from the file of respondent no. 22 and after examining the validity and propriety of the impugned order dated 23 August, 2021 (Exhibit J hereto) be pleased to quash and set aside the same;

b. this Hon'ble Court be pleased to call for the records and proceedings which led to passing of the impugned order dated 5 October, 2021 (Exhibit P hereto) passed in RTS Revision Vahivat Case No. 181 of 2021 from the file of respondent no. 23 and after examining the validity and propriety of the impugned order dated 5 October, 2021 (Exhibit P hereto) be pleased to quash and set aside the same;

c. this Hon'ble Court be pleased to call for the records and proceedings in Vahivat case no. 17 of 2021 preferred

by respondent nos. 1 to 3 pending before the respondent no. 22 and to quash and set aside the proceedings in Vahivat case no. 17 of 2021 in its entirety;

d. that pending the hearing and final disposal of the petition, this Hon'ble Court be pleased to stay the effect, implementation and operation of the impugned order dated 23 August, 2021 (Exhibit J hereto) passed by respondent no. 22 in Vahivat case no. 17 of 2021 from the file of respondent no. 22.

e. that pending the hearing and final disposal of the petition, this Hon'ble Court be pleased to stay the hearing/proceedings in Vahivat case no. 17 of 2021 pending before respondent no. 22.

f. ad-interim reliefs in terms of prayer clauses (d) and (e) above.

2. Mr. Samdani, learned senior counsel for the petitioner has argued on the merits of the petitioner's contentions, a case which would be required to be urged by the petitioner before the Mamlatdar. However, the primary concern of Mr Samdani in assailing the impugned order is to the effect that the Mamlatdar does not have any jurisdiction to pass an interim injunctory order. In support of his submissions, Mr. Samdani has placed reliance on the decision of **Jamadar Suleman Bachumiya vs. Mahavir Mathadin and Anr., 1963 Gujarat Law Report 131** wherein the Court considering the provisions of Section 5 of the Mamlatdars' Courts Act observed that the rules of the Code of Civil Procedure do not apply to cases for which a specific procedure has been prescribed under section 5(2) of the Mamlatdars' Courts Act. It

was observed that Section 5(2) of the Mamlatdars' Courts Act makes a provision for a permanent injunction and there are no provisions under the Act for an order of an interim injunction to be made by the Mamlatdar. It was held that the contention that Mamlatdar cannot grant an interim injunction in a suit under section 5 of the Mamlatdars' Court Act, was the correct position in law. Similar view has been taken by N.D. Kamat, J. in a decision in Civil Revision Application no. 393/72 by order dated 6 December, 1972 in **Sahebrao vs. Smt. Indubai** as reported in 1974 Mah. L.J. wherein the Court has again held that there is no indication of any intention of the legislature that the Rules of the Code of Civil Procedure should apply to the cases filed under the Mamlatdars' Courts Act, as Section 5(2) makes a specific provision for permanent injunction, however, there is no provision for an interim or temporary injunction.

3. On the reading of Section 5 of the Mamlatdars' Courts Act as also from the survey of other provisions, it is quite clear that the powers vested with the Mamlatdar are only confined to the grant of a permanent injunction as clear from the language of Section 5(2) of Mamlatdars' Courts Act and the Mamlatdar would not have any power to pass an interim order. I am, therefore, in complete agreement with the decision of **Jamadar Suleman**

Bachumiya (*supra*) and also in the decision of **Sahebrao** (*supra*).

The Sub-Divisional Officer, being a revisional authority, ought to have appreciated such position in law in passing the impugned order. Accordingly, the petition needs to succeed insofar as prayer clauses (a) and (b) are concerned. It is so ordered.

4. However, there are subsequent developments during the pendency of this petition, namely, that the learned Mamlatdar has proceeded to hear the plaintiffs/respondent nos. 1 to 3 and some of other respondents and as informed by Mr. Sakhare, learned senior counsel for respondent nos. 1 to 3 and the proceedings are now closed for orders. The petitioner did not appear before the Mamlatdar and had preferred adjournment applications, which was twice granted, however, the last adjournment application was rejected. Mamlatdar thereafter proceeded to close the proceedings for passing final orders, while permitting the petitioner to file written submissions.

5. In the above circumstances, in my opinion, all the parties are required to be effectively heard considering the nature of the proceedings. It may not be an appropriate situation that an adjudication takes place which is not wholly and effectively adjudicating the rights of the parties. This would only lead to

further litigation. In these circumstances, I am of the considered opinion that the Mamlatdar should not proceed to pass final orders on the hearing which he has concluded on 14 December, 2021. It would be appropriate and in the interest of justice that the petitioner as also the plaintiffs/respondent nos. 1 to 3 along with all the parties to the proceedings appear before the Mamlatdar afresh. The Mamlatdar shall grant all the parties an opportunity of hearing and pass final orders on the proceedings.

6. At this stage, I am informed that the petitioner has not filed his pleadings to the main suit, that is his written statement. If that be so, Mr. Sakhare would fairly agree that such an opportunity can be provided. Let such written statement be filed within a period of 10 days from today. A copy of the same be served on all the parties well in advance. The Mamlatdar thereafter shall fix a convenient date to hear the parties and make an endeavour to conclude the hearing on the proceedings by 30 January, 2022 and pass final orders before 15 February, 2022.

7. Ordered accordingly.

8. The petition is accordingly disposed of in the above terms.
No costs.

(G.S.KULKARNI, J.)