

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.2780 OF 2022

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|----|---------------------------------------|---|-----------------------|
| 1. | Karbhari Raibhan Thete |] | |
| | Age : 65 Years, Occu. : Agricultural, |] | |
| | R/o Jehur, Tq. Kannad, |] | |
| | Dist. Aurangabad. |] | |
| 2. | Dnyaneshwar Karbhari Thete |] | |
| | Age : 40 Years, Occu. : Agricultural, |] | |
| | R/o Jehur, Tq. Kanand |] | |
| | Dist. Aurangabad |] | |
| 3. | Balu Karbhari Thete |] | |
| | Age 45 Years, Occu. : Agricultural, |] | |
| | R/o Jehur, Tq. Kanand, |] | |
| | Dist. Aurangabad |] | |
| 4. | Gorak Yadav Kuser |] | |
| | Age : 45 Years, Occu. : Agricultural, |] | |
| | R/o Jehur, Tq. Kanand, |] | |
| | Dist. Aurangabad. |] | <i>... Petitioner</i> |

Versus

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|----|------------------------------------|---|-------------------------|
| 1. | The Additional Collector, |] | |
| | Aurangabad. |] | |
| 2. | The Tahasildar Kanand, |] | |
| | Dist. Aurangabad. |] | |
| 3. | Chandrakalabai Sarangdhar Pawar, |] | |
| | Age : 50 Years, Occu. : Housewife, |] | |
| | R/o Jehur, Tq. Kanand, |] | |
| | Dist. Aurangabad. |] | <i>... Respondents.</i> |

...
Mr. Kachru A. Ingle, Advocate for Petitioners.
Mr. K. B. Jadhavar, AGP for Respondent Nos.1 and 2-State.
...

CORAM : MANGESH S. PATIL, J.

RESERVED ON : 07 JUNE 2022.

PRONOUNCED ON : 24 JUNE 2022.

JUDGMENT :

. Heard.

2. Rule. Rule is made returnable forthwith. At the joint request of the parties, the matter is heard finally at the stage of admission.

3. The petitioners are challenging the judgment and order passed by the learned Sub Divisional Officer, dismissing their revision preferred under section 23(2) of the Mamlatdars' Courts Act, 1906 (for short, "the Act"), whereby the learned Sub Divisional Magistrate confirmed the order passed by the Mamlatdar under section 5(2) of that Act in a suit instituted by the respondent no.3, holding that there has been a customary way along with common boundary of the petitioners' land gut nos.43 and 44 to have access to her land in gut no. 45 of village Chinchwad, Tq. Kannad, Dist. Aurangabad.

4. Learned advocate for the petitioners would submit that both the authorities have rendered the decisions overlooking the scheme of the Act. The scheme contemplates that it should take the shape of a suit before a civil court, by lodging a plaint. There are elaborate provisions regarding contents of the plaint, statement on verification, examination of the plaintiff on oath, powers

for rejection of the plaint, return of plaint, attendance of witnesses, passing of the orders *ex parte*, setting aside of the orders passed *ex parte* on sufficient cause being shown, withdrawal of the suit, adjournments, power to add parties, procedure to be followed in case of death of a party, points to be decided by the Mamlatdar, finality to the orders passed by the Mamlatdar and the Collectors power to call for and examine the record of the suit. If such is the scheme of the Act, the authorities below ought to have followed the procedure as prescribed therein. They have simply called for the written statement, conducted the punchnama and took the decision after hearing both the sides. In the absence of such procedure having been followed neither of the orders is sustainable in law.

5. The learned AGP supports the orders.

6. The respondent no.3 has been served with a notice for final disposal, but has not turned up.

7. Time and again, this court has reflected on the scheme of the Act. Without indulging into the history the precedents, suffice for the purpose to observe that when an authority is empowered to exercise quasi judicial function, to be exercised in the manner provided by the statute, it is imperative for it to exercise that power strictly in accordance with law. This is precisely where the authorities below seem to have ignored the basic tenets of law.

8. The power conferred upon on a Mamlatdar under the Act elaborately proceeds to lay down the procedure to be followed by him as has been submitted by the learned advocate for the petitioners. He has to undertake the inquiry into the alleged obstruction under section 5(2) of the Act, as if it is a suit. Even the legislature in its wisdom has used the word 'suit', albeit it has not been defined in the Act. One needs to understand the connotation of the word. The subsequent provisions contained in section 7 of the Act on words explicitly demonstrate that the inquiry to be undertaken by a Mamlatdar has all the drappings of a suit and which are clearly analogous to the powers conferred upon a civil court under the Code of Civil Procedure. It is, therefore, expected of a Mamlatdar to try and decide a suit filed before him under the Act, as if it is a civil suit and exercise the various powers conferred upon him like a civil court.

9. Though the procedure is considered to be hand-maid of justice, a blatant and patent violation of the procedure at every stage of the hearing of the suit under the Act cannot be lightly brushed aside.

10. As can be seen, the learned Mamlatdar has completely ignored the provisions of the Act. He did not insist for verification of the plaint, he has not framed issues, has not to called upon the parties to lead evidence and has not decided the suit objectively with respect to the points in issues as contemplated under section 19 of the Act.

11. This clearly indicates that he has not exercised the quasi judicial power in accordance with procedure prescribed under the Act, which renders the entire exercise undertaken by him futile.

12. Surprisingly, even the learned Sub Divisional Officer has not considered all these material aspects and has readily subscribed to the conclusions drawn by the Mamlatdar. He has not objectively scrutinized the reasoning of Mamlatdar and has also miserably failed to undertake any scrutiny independently. After reproducing the rival arguments, in one line he has concluded that the spot inspection undertaken by the Mamlatdar himself and the punchnama drawn by the Block Development Officer were sufficient to justify the conclusions drawn by the Mamlatdar.

13. Though the learned Mamlatdar and the learned Sub Divisional officer have referred to a decision in Regular Civil Suit No.158 of 2004, admittedly, the petitioners were not the parties to that suit. The respondent no.3 had filed that suit against three persons claiming a right of way along the southern side boundary of the land of the defendants in that suit, to reach to her property being 1 Hector 62 Are portion out of 7 Hector 81 Are portion from gut no. 45.

14. It must be mentioned that the petitioners were not the parties to

that suit. The decision would only bind the parties to that suit and it would not operate *in rem*. Still, ignoring all these crucial aspects, both the authorities below have referred to this decision to draw an inference justifying their conclusion. They have also not discussed as to how even if the decision is to be referred to, it has any nexus with the disputed way being claimed by the respondent no.3

15. In view of the above, the orders passed by both the authorities are clearly perverse, arbitrary and illegal and liable to be quashed and set aside and the suit deserves to be remanded to the Mamlatdar for decision afresh.

16. The writ petition is partly allowed. The impugned judgment and orders are quashed and set aside. The suit is remitted back to the Mamlatdar for decision in accordance with law in the light of the observations made herein above.

17. Rule is made absolute in above terms.

(MANGESH S. PATIL, J.)

Tandale/-