

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

WRIT PETITION NO.6640 OF 2022

1. Sanjay s/o. Keshav Bhoite
Age : 51 years, Occ: Agri
2. Hausabai w/o Raosaheb Bhoite
Age : 61 years, Occu: Agri
3. Atmaram S/o. Bansi Bhoite
Age : 46 years, Occu: Agri
4. Balasaheb s/o. Ravsaheb Bhoite
Age : 48 years, Occu: Agri
5. Sambhaji Murlidhar Kolte
Age: 52 years, Occ: Agri
6. Ramesh S/o. Changdeo Bhoite
Age : 54 years, Occu: Agri

All R/o Mali Bhabhulgaon, Tq. Pathrdi
Dist. Ahmednagar.

... **PETITIONERS**

VERSUS

1. The Collector,
Collector Office, Ahmednagar.
2. The Sub Divisional Officer,
Pathardi, Tq. Pathardi, Dist. Ahmednagar.
3. The Tahasildar,
Pathardi, Tq. Pathardi, Dist. Ahmednagar.
4. Sudhakar s/o. Bhaguji Waikar,
Age: 55 years, Occ: Agri
5. Sunita s/o. Babasaheb Waikar
Age : 52, Occ: Agri
6. Jagannath s/o Narayan Bhoite
Age: 62, Occ: Agri

Res. Nos.4 to 6 R/o Mali Bhabulgaon,
Tq. Pathardi, Dist. Ahmednagar

... **RESPONDENTS**

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Advocate for Petitioners : Mr. Mahesh S. Taur
AGP for Respondent Nos.1 to 3 : Mr. P.G. Borade
Advocate for Respondent Nos.4 to 6 : Mr. Aniruddha A. Nimbalkar

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CORAM : MANGESH S. PATIL, J.

DATE : 29.06.2022

JUDGMENT :

Heard. Rule. The Rule is made returnable forthwith. Learned AGP waives service for the respondent Nos.1 to 3. Learned advocate Mr. Nimbalkar waives service for the respondent Nos.4 to 6. At the joint request of the parties, the matter is heard finally at the stage of admission.

2. The respondent Nos.4 to 6 had filed a suit under Section 5(2) of the Mamlatdars' Courts Act, 1906 (herein after 'the Act') asserting that there was a customary way to reach to their lands Gut Nos.578 and 579 through the petitioners' lands Gut Nos.596, 598 etc. They were added as defendants. After conducting some hearing, by the order dated 26.10.2021 he dismissed the suit holding on the basis of a Panchanama that there were no signs at the spot indicating existence of any way. He also concluded that the suit was not filed within six months from the date of first cause of action.

3. Aggrieved by dismissal of the suit the respondent Nos.4 to 6 preferred a revision under Section 23(2) of the Act before the Sub Divisional Officer. By the judgment and order under challenge the Revision was allowed. The order of Mamlatdar was quashed and set aside also directed a road to be laid along the bund.

4. I have carefully considered the rival submissions and perused the record.

5. In order to appreciate the matter in controversy it is necessary

to bear in mind the entire 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.

6. In spite of such elaborate provisions, both the authorities seem to have proceeded to decide the matter under the Act oblivious of the procedure to be followed. Except undertaking a Panchanama the Mamlatdar does not seem to have called upon the parties to lead evidence by framing issues and has readily drawn some inference on the basis of the Panchanama. No evidence was permitted to be led which could have enabled him to reach some objective conclusion. Instead of resorting to such a procedure, by drawing some subjective conclusion simply on the basis of the Panchanama, the Mamlatdar had dismissed the Suit.

7. Pertinently, in spite of the fact that in the suit it was specifically averred that the way was in existence but the petitioners had created some obstructions on 09.11.2020 and though the suit was filed on 28.12.2020 within a period of six months as contemplated under Section 5(3) the

Mamlatdar had gone to the extent of even recording a finding that the suit was barred by limitation. Interestingly he had drawn such conclusion by referring to the contents of the Panchanama. One cannot understand as to how the Panchanama would have been of any helpful in deciding as to when the obstruction was raised for the first time muchless to draw an inference that it was created beyond six months next before filing of the suit, that too without seeking any evidence from the parties.

8. Apart from the fact that the Mamlatdar had miserably failed to undertake the inquiry in accordance with law and had reached a conclusion that the suit was barred by limitation which observation and the conclusion was clearly arbitrary and capricious, by the self same order he had even exceeded the jurisdiction in directing the respondent Nos.4 to 6 who were the plaintiffs not to create obstruction to the petitioners possession over their lands. All in all, the decision by Mamlatdar was clearly perverse, arbitrary and illegal.

9. Interestingly, instead of rectifying the lapses committed by the Mamlatdar, the learned Sub Divisional Officer who decided the Revision by the order under challenge in this Writ Petition has perpetuated the lapses. In a cryptic and sans sound and cogent reasons, relying upon the very same panchanama which was refused to be relied upon by the Mamlatdar, the learned Sub Divisional Officer has reached a conclusion that the way has been in existence but was obstructed by the Petitioners. Even this finding is not emphatic. Instead, he has proceeded to declare that the farmers have a

right to claim a way to reach to their lands and that the Mamlatdar should/ ought to have inquired into and decided need of the farmers to reach to their lands. However, instead of passing any order as contemplated under Section 5(2) of the Act he has expressed need to lay down a road and has specifically directed to lay a road about which he even does not give the particulars as to along the boundaries of which lands the road is to be laid. Needless to state that no such power to lay down a new road or way vests with the authorities under the Mamlatdar's Courts Act. The order passed by the learned Sub Divisional Officer is clearly sans sound reasons besides being beyond his jurisdiction. It clearly demonstrates utter lack of application of mind.

10. To conclude, both the authorities, the Mamlatdar and the Sub Divisional Officer, have clearly overlooked the provisions of the Act, the scope and purport of the provisions and the limitations on their powers in deciding the matters under that Act. They have exercised the jurisdiction that was not conferred upon them under the Act and consequently it becomes imperative to quash and set aside both the orders and relegate the parties to the Mamlatdar for deciding the suit afresh.

11. The Writ Petition is partly allowed.

12. The orders passed by the Mamlatdar as also by the learned Sub Divisional Officer are quashed and set aside. The suit is remanded to the Mamlatdar for decision afresh in tune with the provisions of the Act and the observations made herein above. The parties shall appear before the

Mamlatdar on 22.07.2022 and there shall be no need for the Mamlatdar to direct any notice to be issued to them.

13. The Rule is made absolute.

(MANGESH S. PATIL, J.)

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