

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

973 WRIT PETITION NO.6074 OF 2018
WITH CA/10749/2021 IN WP/6074/2018

TARABAI RAVSAHEB CHAUDHARI AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for Petitioners / applicants : Mr. Ambetkar Arvind G.
AGP for the respondent – State : Mr. K.B. Jadhavar
Advocate for the respondents no. 4, 5A to 5D, 6,
7A and 7B and 20: Mr. D.R. Adhav
Advocate for respondents no. 8 and 9 : Mr. Ajay T. Kanawade
h/f. Mr. A.P. Avhad
Respondent no. 10 is deleted
Respondents no. 11 to 14, 17, 18 served - absent
...

CORAM : MANGESH S. PATIL, J.

DATE : 5 JULY 2022

ORAL ORDER :

Heard.

2. Rule. Rule made returnable forthwith. Mr. Adhav waives service for respondents no. 4 to 7 who are original plaintiffs before the Tahsildar under section 5(2) of the Mamlatdar's Courts Act, 1906 (**"the Act"**).

3. Respondents no. 4 to 7 claiming that the customary way has been in existence to approach their field but complaining that the petitioners had created obstacles filed the suit. The Mamlatdar conducted the *panchanama* and decreed the suit. The learned Sub Divisional Officer has dismissed the revision preferred by the petitioner under section 23(2) of that Act.

4. I have heard the learned advocates of both sides.

5. Time and again, this Court in several matters has elaborately discussed as to how the proceeding contemplated under section 5 of the Act should take shape. The entire scheme of the provisions contained in section 5 to 23 of the Act demonstrates that the dispute to be entertained and decide should be in the form of a suit. The conscious use of the word *plaint*, provision for limitation, recording of evidence, rejection of *plaint*, formulation of points for determination are clearly indicative of the fact that the authorities under the Act should exercise the *quasi* judicial power strictly in accordance with the procedure prescribed by the Act which is analogous to the trial of a suit by a civil Court.

6. The case presents yet another example as to how giving a complete go bye to the procedure under the Act, the authorities have proceeded to decide the dispute.

7. Though the respondents no. 4 to 7 presented the claim and complained about the obstruction, conspicuously they did not specifically contend as to on which date the cause of action had arisen for the first time. It is imperative in view of the fact that by virtue of sub-section 3 of section 5, the suit has to be brought within six months of the cause of action. Sub section 4 of section 5 describes that the cause of action contemplated under section 3 is the date on which the obstruction is created for the first time. In a complete deviation to the

usual approach of understanding the cause of action in the case of such obstruction to be a continuous cause, it is imperative for a plaintiff under section 5(3) and 5(4) to file a suit by disclosing a specific date on which the obstruction was created for the first time.

8. Pertinently, even this could be a ground for rejection of plaint as contemplated under section 12 of the Act.

9. The Mamlatdar did frame an issue regarding limitation but has answered it by observing that the claim contained a specific averment about the obstruction having been created within five months next before filing of the suit. However, the learned advocates of both the sides fairly concede that there is no such averment in the application. One, therefore, cannot apprehend as to how the Mamlatdar could have recorded such a finding with such an observation.

10. Instead of advertng to this specific issue raised by the petitioners in their written statement as also in the revision petition, the learned Sub Divisional Officer does not seem to have taken care to examine it.

11. Again, admittedly, except conducting the *panchanama*, no other hearing had taken place before the Mamlatdar. Though *panchanama* reads that the *panchas* had noticed that the obstruction was created before few days back, one cannot understand as to how a *pancha* who is supposed to merely notice the situation at the spot

could have vouched about even the date or the period when the obstruction took place.

12. Except such *panchanama*, there was no material to reach a conclusion sufficient to decree the suit.

13. The learned Sub Divisional Officer has also apparently abdicated his duty of exercising a revisional power under section 23(2) of the Act. After reproducing the rival submissions in few words, he has expressed that he was concurring with the conclusion drawn by the Mamlatdar and decided the revision. This is not the manner in which he was expected to decide the revision. Without undertaking scrutiny of the entire material and reaching some objective conclusion, he has readily accepted the decision passed by the Mamlatdar.

14. Both the orders are perverse, arbitrary and illegal. Petition is allowed. The impugned orders are quashed and set aside.

15. Pending civil application is disposed of.

16. It is pointed out that the petitioners were called upon to and have deposited an amount of Rs.10,000/- in this Court to show *bona fides*. Office to verify and refund the amount with accrued interest, if any.

[MANGESH S. PATIL]
JUDGE

arp/