

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

WRIT PETITION NO. 14821 OF 2021

Ramdas Bayaji Darekar & Ors.

...Petitioners

Versus

Bapu Rangnath Darekar & Ors.

...Respondents

.....
Mr. D. P. Palodkar, Advocate for the petitioners
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**CORAM : BHARATI H. DANGRE, J.
DATE : JANUARY 4TH, 2022**

PER COURT : -

1. Heard the learned Counsel for the petitioner in support of the writ petition. The petitioner is aggrieved by the two concurrent orders passed by the Tahsildar/Mamlatdar and the order in appeal passed by the Sub-Divisional Officer, the appellate authority under the Mamlatdars' Courts Act, 1906.

2. Perusal of the writ petition would reveal that the respondents no. 1 and 2 along with the residents residing in the locality at Hiradgaon, Tq. Shrigonda, Dist. Ahmednagar, approached the Tahsildar by preferring an application, alleging that in respect of Gut No. 49 of Hiradgaon, a case is ongoing and there is an

obstruction created by blocking the water supply. The informal representation/letter addressed to the Tahsildar is signed by the defendant nos. 1 and 2 and 8 others and the application came to be registered as Rasta Case No. 403/2020. An application for amendment was moved by the applicants seeking amendment to the pleadings and also for insertion of certain parties, by pleading that the parties are necessary and on the ground that the nomenclature of the parties including their age was not properly notified in the Rasta Case. This amendment application came to be allowed by the Mamlatdar on 30.08.2021.

3. Counsel for the petitioner would submit that the amendment granted in fact travel beyond the application where only amendment in the formal nature was sought but on perusal of the amended case, it can be discerned that it has undergone change in the pleadings as well as the cause of action. The submission advanced on behalf of the Counsel for the petitioner is though there is no exact formal format prescribed for presentation of a case under the Mamlatdars' Courts Act, it is imperative on part of the Mamlatdar to follow the procedure set out in Section 8 of the Mamlatdars' Courts Act before the case is registered and a cognizance of which is taken by the Mamlatdar. Apart from this by inviting attention to Section 9

to 11, the submission is, the Mamlatdar, without following the said procedure prescribed by statute could not have entertained the application, nonetheless the amendment. The application challenging the order granting amendment when presented before the appellate authority has been rejected by seeking recourse of Sections 5 and 8 of the Mamlatdars' Courts Act. Another reason which has been cited by the Sub Divisional Officer / appellate authority is to the effect that the the proceedings are still pending before the Mamlatdar and challenge can be raised under Section 23(2) of the Mamlatdars' Courts Act when the proceedings have attained finality and not at an interlocutory stage.

4. Perusal of the impugned order, would reflect that the Mamlatdar has registered the Rasta Case, on an informal application having been filed and on satisfaction of the Mamlatdar, after enquiring that the applicants are desirous of obtaining the relief, the application is deemed to have been presented in it's appropriate form as contemplated under Section 7. Perusal of the Rasta Case no. 403/2020, which is appended at Exh. 'B' to the petition, would reveal that the application is in a proper format which discloses the cause of action, jurisdiction as well as the relief as prayed for. The amendment having been allowed, do not in any case

change the nature of the proceedings which the Mamlatdar is entertaining in the Rasta case registered by him. No prejudice is caused to the petitioners, who are impleaded as respondents/defendants in the said case. In absence of the same, the appellate authority has rightly refused to entertain the appeal.

5. The learned Counsel for the petitioner also makes a solemn statement that the Mamlatdar has now closed the proceedings for orders.

6. In any case on the proceedings being concluded, the remedy of filing a revision by invoking Section 23(2) of the Mamlatdars' Courts Act is always available to the petitioners. In the aforesaid circumstances, since I do not find any illegality in the impugned orders, the writ petition deserves a dismissal and is accordingly dismissed. Needless to state that the contentions raised in the present writ petition are permitted to be raised as grounds in the revision application, if the revision application is filed by the petitioners.

[BHARATI H. DANGRE]
JUDGE