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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1211 OF 2020

1. Uttam s/o Yadav Bansode PETITIONERS
Age – 70 years, Occ – Agri

2. Dyanoba s/o Vishnu Bansode,
Since Minor through Under Guardian
of his mother namely
Kaveri w/o Vishnu Bansode
Age – 35 years, Occ – Agri & Household
Both R/o Bhalgaon,
Taluka – Pathardi, District – Ahmednagar

VERSUS

1. The Additional Collector RESPONDENTS
(Land Acquisition Officer No.1)
Ahmednagar, District – Ahmednagar

2. The Tahsildar
Pathardi, Taluka – Pathardi,
District – Ahmednagar

3. Kausabai Premraj Bansode,
Age – 62 years, Occ – Agri & Household

4. Gayabai Raosaheb Bansode,
Age – 56 years, Occ – Agril & Household

5. Shivaji Laxman Bansode
Age – Major, Occ – Agril

6. Damu s/o Laxman Bansode
Age – Major, Occ – Agril

7. Vitthal s/o Laxman Bansode
Age – Major, Occ – Agril

8. Arjun s/o Ramrao Landge
Age – Major, Occ – Agril

9. Bhimrao Ramrao Landge
Age – Major, Occ – Agril

All R/o Bhalgaon, Taluka – Pathardi
District - Ahmednagar

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Mr. R. S. Kasar, Advocate for the petitioners
Mrs. V. S. Chaudhari, AGP for respondent - State
Mr. D. R. Markad, Advocate for respondents No.3 and 4

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[CORAM : NITIN B. SURYAWANSHI, J.]

RESERVED ON : 24th FEBRUARY, 2022

PRONOUNCED ON : 10th MARCH, 2022

JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard finally with the consent of the learned advocates for the parties.

2. This petition challenges order dated 4th July, 2018 passed by Tahsildar, Pathardi in Rasta Case No. 48 of 2017, which is confirmed by the Deputy Collector, Ahmednagar in RTS Revision No. 16 of 2018.

3. Respondents No.3 and 4 filed proceedings under section 5 (2) of the Mamlatdars' Courts Act, 1906 (hereinafter for short "the said Act"), against 6 persons, claiming that they are the owners of Gut No. 694, which is their ancestral property and abutting to the said Gut number, there are Gut Nos. 686, 688, 687, 692, 693, 694/5/7. The other adjoining agriculturists are

not obstructing the respondents, however, the petitioners who are owners of Gut No. 688, 687 and 694/5/7 are obstructing the right of way of the respondents. Hence, the obstruction of the petitioners may be directed to be removed.

4. After conducting site inspection and preparing *Panchanama* and after hearing the parties, the Tahsildar allowed the said application and directed the petitioner to remove obstructions created on the north south cartway. The said order is confirmed in revision by the Deputy Collector.

5. Heard learned advocate for the petitioners, learned advocate for respondents No. 3 and 4 and learned AGP for respondents No.1 and 2.

6. Learned advocate for the petitioner assailed the impugned order passed by the Tahsildar contending that petitioner No.2, who is aggrieved by the impugned order, is not made party before the Tahsildar. Further submissino is that there is non compliance of the provisions of sections 7, 9, 10 and 12 of the said Act and on that ground alone, the impugned orders are liable to be quashed and set aside. In support of his submissions, he placed reliance on "***Gaurakshan Sansthan V/s State of Maharashtra and Others***" 2019 (4) Bom.C.R. 643, co-

ordinate bench decisions in *writ petition No. 8162 of 2012 (Nathu Bhandaru Zambre V/s Ratnakar Lahanu Patil)* and *Civil Revision Application No. 187 of 2009 (Purushottam Umrao Chavan V/s The State of Maharashtra and Others)*.

7. Learned advocate for respondents No.3 and 4 and the learned Assistant Government Pleader on the other hand, supported the impugned orders. Learned Assistant Government Pleader has made available the original record for perusal of the Court.

8 Perusal of the record shows that the application filed by respondents No. 3 and 4 is not in the format of a plaint. There is no verification. Petitioner No.2 was not arrayed as party respondent in the said application. The record further reveals that respondent No. 2 has failed to comply with the provisions of section 9 of the said Act in the present matter. As per section 9 of the said Act, when the plaint does not contain particulars specified in section 7 of the said Act, then the Mamlatdar has to examine the plaintiff on oath and ascertain from him whether the particulars stated are correct. This Court in "*Gaurakshan Sansthan*" (*supra*) has observed as under:

“5. The provisions of section 7 of the said Act require the

proceedings to be commenced by way of a plaint. The particulars to be stated therein have been stipulated in section 7. Under section 9 of the said Act when the plaint does not contain the particulars specified in section 7 then the Mamlatdar has to examine the plaintiff on oath and ascertain from him whether the particulars stated are correct. These aspects have to be reduced in writing in the form of an endorsement on or annexure to the plaint. Under section of the said Act, the Mamlatdar has to require the plaintiff to subscribe and verify section 10 of the said Act, the Mamlatdar has to require the plaintiff to subscribe and verify the plaint in his presence in the manner specified. Section 12 thereafter empowers the Mamlatdar to reject the plaint if the plaintiff fails to furnish particulars as required by section 7 within the time fixed under section 9 of the said Act. These provisions therefore indicate the mandatory nature of the compliance to be done as stipulated by section 7 of the said Act. It is only when the plaint is found to be admissible that the Mamlatdar can proceed with the adjudication on merits.”

9. The same view is taken by the co-ordinate benches in Writ Petition No. 8162 of 2012 and Civil Revision Application No.187 of 2009.

10. The decisions rendered by respondent No.2 and confirmed by respondent No.1 are, therefore, vitiated for non compliance of the provisions of sections 7, 8 and 9 of the said Act.

11. In the result, the writ petition is allowed. Impugned orders dated 4th July, 2018 passed by Tahsildar, Pathardi in Rasta Case

No. 48 of 2017 and dated 14th August, 2019 passed by Deputy Collector, Ahmednagar in RTS No. 16 of 2018 are hereby quashed and set aside.

12. The respondents No. 3 and 4 are at liberty to file a fresh application on the same cause of action by complying with the provisions of section 7 of the said Act. Report of the Talathi, which is already on record, can also be considered. If such proceedings are filed by the respondents, the same shall be decided on its own merits in accordance with law, expeditiously. Rule is made absolute in aforesaid terms with no order as to costs.

[NITIN B. SURYAWANSHI]
JUDGE