

Arjun

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 12680 OF 2018

Shri. Dhondiram Narayan Dhope & Ors. ...Petitioners

Versus

Shri. Chandrakant Anna Gore & Ors. ...Respondents

Mr. Balasaheb Deshmukh, for the Petitioners.

Ms. Manisha Devkar, for Respondent No.1.

Mr. S. D. Rayrikar, AGP, for Respondent Nos. 2 & 3.

CORAM : MADHAV J. JAMDAR, J.

DATE : 22nd July 2022

P.C. :

1. Heard Mr. Balasaheb Deshmukh, learned counsel appearing for the Petitioners, Ms. Manisha Devkar, learned counsel appearing for Respondent No. 1 and Mr. S. D. Rayrikar, learned AGP for Respondent Nos. 2 & 3.

2. By this Petition, the Petitioner has challenged the order dated 22nd November, 2016 passed by Tahsildar, Malshiras in Case No. Road/SR 20 of 2016 filed under the provisions of Section 5 (2) of the Mamlatdar's Courts Act, 1906 (hereinafter referred to as "the said Act") as well as the

order dated 30th August, 2018 passed by the Sub-Divisional Officer, Malshiras Sub-Division, Malshiras, Akluj in RTS Revision/Appeal/No. 2 of 2017 filed under Section 23 (2) of the said Act.

3. Mr. Deshmukh submitted that, the said proceedings are not maintainable as there is no road in existence as contended by the Respondent No. 1. He submitted that, the Respondent No. 1 has not come to the Court with clean hands as it has been suppressed that adjoining land bearing Gat No. 383 belonging to the relative of the Respondent No. 1 and the Respondent No. 1 can use the said land for approaching his land. He further submitted that the Tahsildar has gone beyond the scope of the said proceedings and in fact the order not sought by the Respondent No. 1, was granted. He submitted that there is no finding recorded that there is constructed road or any approved road passing from his land to the land of Respondent No. 1. He submitted that the Respondent No. 1 has not even contended any easementary right. He further submitted that, the Respondent No. 1 has not produced any documentary evidence to support his case.

4. On the other hand, Ms. Devkar, learned counsel appearing for the Respondent No. 1 submitted that the Gat No. 383/3 (Part) belonging to

the Respondent No. 1 and Gat No. 383/3 (Part) belonging to the Petitioners was purchased by both of them from Muktabai Ganpat Dhope. The Respondent No. 1 has purchased the land by registered sale deed dated 22nd August, 2008 whereas the Petitioner has purchased part of the said land by registered sale deed dated 28th January, 2014. She submitted that, it is specifically mentioned in the registered sale deed dated 22nd August, 2008 executed in favour of the Respondent No. 1 that there is road available on the west side on the balance portion of Gat No. 383/3. She submitted that, the said transaction was recorded in record of rights by mutation entry No. 1297 on 24th March, 2009 and the said mutation entry was certified on 30th April, 2009. The said mutation entry clearly records right of user of the said road. She submitted that Respondent No. 1 is in continuous user of the said road since purchase of the said land. She pointed out that the findings recorded by the Tahsildar as well as the Sub-Divisional Officer and submitted that as concurrent findings are recorded, no interference of this Court under Article 226 and Article 227 of the Constitution of India is warranted.

5. Before considering the rival contentions, it is necessary to mention that this Court by order dated 18th June, 2019 admitted the present

Writ Petition by passing the following order :

“The Order impugned herein is passed by the Sub-Divisional Officer, Malshiras under Section 23(2) of the Mamlatdar Courts Act, 1906. The issue involved in the present Petition is referred to the larger Bench by the co-ordinate Bench (Coram:- Shri. A. S. Chandurkar, J.) at Nagpur of this Court in Prashant Prabhakar Rao Mukkavar Vs The Sub-Divisional Officer, Pusad & Ors. (Writ Petition No. 387 of 2017, dated 12th April, 2018).

In view thereof, Admit.

Interim relief in terms of prayer clause (b).

The parties are at liberty to mention the matter after the decision of Larger Bench.”

6. It is specifically mentioned in the order that the issue involved in the present Petition is referred to the larger bench by the co-ordinate bench at Nagpur and therefore, the Writ Petition is admitted and interim relief in terms of prayer clause (b) was granted. It is specifically mentioned that the parties are at liberty to mention after the decision of the larger Bench.

7. In the present case, the impugned order dated 30th August, 2018

has been passed by the Sub-Divisional Officer, Malshiras Division, Akluj. The issue referred by the co-ordinate Bench at Nagpur by order dated 12th April, 2018 is as follows.

“Whether it is permissible for the Collector to delegate powers conferred on him by Section 23 (2) of the Mamlatdar Courts Act, 1906 to any Sub-Divisional Officer as defined by Section 2 (34) of the Maharashtra Land Revenue Code, 1966? If such delegation of powers is permissible, whether such delegation would entitle the Sub-Divisional Officer to exercise jurisdiction under Section 23 (2) of the Mamlatdar Courts Act, 1906.”

In view of said reference by the co-ordinate bench the said issue was referred for decision to the Division Bench. The said issue was answered by the Division Bench by order dated 31.07.2019 passed in Writ Petition No. 387 of 2017 along with Writ Petition No. 8235 of 2017 in paragraph 13 as follows:-

“In view of the aforesaid discussion, we answer the reference and hold that the delegation of power by the Collector under sub-section (2A) of Section 23 of the Mamlatdars’ Courts Act to the Deputy Collector or Assistant Collector, who is working as the Sub-Divisional Officer of the concerned divisions of the district, is correct,

legal and proper. We, however, hold that if any dispute arises as to whether a particular Sub-Divisional Officer is not the Assistant Collector or Deputy Collector or Assistant Commissioner, as is referred to in sub-section (2A) of Section 23 of the said Act, it can be decided on its own merits, and in none of the decisions referred to above, such dispute was ever raised and decided.”

8. Thus, it has been held by the reference Court that delegation of power by the Collector under sub-Section 2(A) of Section 23 of the Said Act, to the Deputy Collector or Assistant Collector working as Sub-Divisional Officer of the concerned division of the District, is correct, legal and proper. In view of decision on reference by the Division Bench, Mr. Deshmukh, learned counsel appearing for the Petitioners fairly submitted that he is not raising the said contention.

9. The factual position on record shows that one Muktabai Ganpat Dhope was the original owner of Gat No. 383/3 totally admeasuring 00 H 81 R and Pot Kharaba 0 H 80 R. Out of the said Gut No. 383/3, Muktabai Dhope sold the land admeasuring 0 H 40 R to the present Respondent No. 1 by registered sale deed dated 22nd August, 2008. The

description of the land sold as mentioned in the said registered Sale Deed is set out hereinbelow for ready reference:

" १)	ग. नं.	क्षेत्र हे. आर.	आकार रु. पै.
	३८३/३	०-८१ पो. ख. ०-८०	०-४०
	यापैकी उत्तरेची	हे. आर. ०-४०	रु. पै. ०-२०
	खरेदी दिली.		

यासी चतुःसीमा

पूर्व:- ग. नं. ३८२/१

दक्षिण:- ग. नं. ३८३/३ पैकी शिल्लक

पश्चिम:- ग. नं. ४१७/२

उत्तर:- ग. नं. ३८३/२/२

**२) शिल्लक क्षेत्रातुन पश्चिम बाजुनी दक्षिण - उत्तर
चालीचे जाणे येणेचे समाईक रस्ता वहिवाटीचे**

हक्कासह."

(Emphasis Supplied)

10. By mutation entry No. 1297 dated 24th March, 2009 certified on 30th April, 2009 said Sale was recorded in record of rights. In the said mutation entry, the existence of said road and right to use of the said road is specifically mentioned.

11. Thus it is clear that this registered Sale-Deed proves the existence of road on balance portion of part of Gat No. 383/3. It is also significant to note that the right to use said road is specifically mentioned in the aforesaid mutation entry.

12. The Petitioner No. 3 has purchased balance portion of said Gat No. 383/3 by registered sale deed dated 28th January, 2014. The description of the property which has been purchased by the Petitioner No. 3 as set out in the said registered sale deed is set out hereinbelow for ready reference:-

" ग. नं.	क्षेत्र हे. आर.	आकार रु. पै.
३८३/३	०-८१ ख ०-८०	०-४०
यापैकी दक्षिणेची माझे हिश्यांची संपुर्ण जमिन		
	हे. आर.	रु. पै.
	०-४१	०-२०
	ख ०-८०	
खरेदी दिली.		

यासी चतुःसीमा

पूर्व:- ग. नं. ३८२/१

दक्षिण:- पिरळे रस्ता

पश्चिम:- ग. नं. ४१७/२

उत्तर:- ग. नं. ३८३/३ पैकी

जाणे येणेचे रस्ता वहिवाटीचे हक्कासह."

Thus it is clear that the balance portion of said Gat No. 383/3 is purchased by the Petitioner No. 3. It is significant to note that existence of said road is specifically mentioned in the said registered Sale-Deed.

13. In the above background the Respondent No. 1 filed case under Section 5 (2) of the said Act on 14th September, 2016. It is contention of the Respondent No. 1 in the said Case No. Road/SR 20/2016 that right to use said road has been given to the Respondent No. 1 by said registered Sale Deed dated 22nd August, 2008 and since the date of the said registered Sale Deed, Respondent No. 1 is using the said road. It is further contention of the Respondent No. 1 that on 6th September, 2016, the Petitioners obstructed the Respondent No. 1 from using the said road. It is contended that the Petitioners are deliberately making partition on the said portion of the road. The Petitioners have started cultivation of pomegranate on the said portion of the road.

14. The Petitioners filed reply on dated 25th October, 2016 to said Case No. Road/ SR 20/2016 by contending that such road is not in existence and therefore the case be dismissed. The case cannot be decided

without leading the evidence and that there is another road available from adjoining Gat No. 382/1 which was on the East side of Gat No. 383/3 belonging to the relative of Respondent No. 1 and the same is suppressed by the Petitioner.

15. It appears that in the meanwhile the Tahsildar conducted spot inspection and accordingly Panchanama of said spot inspection was recorded on 20th October, 2016 between 11:00 to 11.30. The contents of the said Panchanama clearly shows that, the said road is in existence and recent cultivation was observed and it is also observed that some obstruction was created on the said road.

16. Both the authorities namely Tahsildar, Malshiras as well as Sub-Divisional Officer, Malshiras Sub-Division, Akluj concurrently observed that the registered Sale Deed mentions about the existence of road and right is given to use the said road and accordingly, mutation entry No.1297 was executed. It is also found that the obstruction was made before four to five days and recent cultivation was seen by which the road was obstructed. In view of this, the Tahsildar, Malshiras, directed that the said obstruction be removed and granted injunction against the Petitioner

directing him not to obstruct user of said road by the Respondent No. 1. The said order is confirmed by the Sub-Divisional Officer, Malshiras Sub-Division, Malshiras, Akluj.

17. Mr. Deshmukh, vehemently submitted that the prayer sought in the Application filed under Section 5(2) of the said Act is only for injunction and not for removal of obstruction and therefore, the Tahsildar granted relief beyond the prayer sought in the Application.

18. Section 8 of the Said Act reads as under:-

“Where a petition not in the form of a plaint is presented to the Mamlatdar and the subject matter thereof appears to fall within the scope of Section 5, the Mamlatdar shall explain to the person presenting the petition the nature of the reliefs afforded by this Act and shall inquire whether the petitioner desires to obtain relief thereby. If the petitioner expresses a desire so to obtain relief, the Mamlatdar shall endorse the desire on the petition which shall thereupon be deemed to be a plaint presented under Section. 7.”

Thus, what is contemplated under Section 8 of the said Act is that even if, the complaint presented in the Mamlatdar's Courts Act is not in the proper form, the Mamlatdar has to explain to the person nature of the reliefs afforded by the said Act and to inquire with the Petitioner whether he is desired to obtain such relief. If the Petitioner expresses desire to obtain such relief immediately to endorse the desire on the petitioner and thereupon the complaints be deemed to be the complaint presented under Section 7.

19. In this particular case the Respondent No. 1 has specifically mentioned in the Complaint that the Petitioners have created obstruction on the said road and also carried out cultivation so as to obstruct the use of said road. The reliefs sought by the Respondent No. 1 are reproduced hereinbelow for ready reference :-

" अ) अर्जदाराचे मालकीचे गट नंबर ३८३/३ चे पश्चिम बाजूचे दक्षिण उत्तर चालीचे रस्त्यास जाबदारांनी स्वतः अगर इतरामार्फत हरकत अडथळा करू नये असा मनाई हुक्म देणेत यावा
 ब) प्रस्तुत दावा मिळकतीचा पाहणीने पंचनामा होईपर्यंत या मुळ अर्जासोबत तुर्तातुर्त ताकीद अर्ज दिला आहे त्यावर जाबदारां विरुद्ध या मुळ अर्जाच्या अंतिम निकाल होईपर्यंत मनाई आदेश देणेत यावा हि विनंती.

क) गरज भासलेस अर्ज दुरुस्तीस परवानगी असावी.

ड) सदर निकालाचे अंमलबजावणीसाठी पोलीस मदत मिळावी हि विनंती.

इ) इतर योग्य ते न्यायाचे हुकूम व्हावेत."

It is clear that, in prayer clause (a) injunction is sought and in prayer clause (b) prayer is sought that till the inspection panchanama is prepared, the injunction be given against the Petitioner. It has already come on record that accordingly, inspection was made and panchanama was prepared on 20th October, 2016. The panchanama clearly shows that not only the Petitioners obstructed the user of the said road but carried out cultivation so that the said road is closed.

20. Section 5 of the Mamlatdar's Courts Act, 1906 inter-alia provides as under:-

"5. Powers of Mamlatdars' Courts. - (1) Every Mamlatdar shall preside over a court, which shall be called a Mamlatdars' Court, and which shall, subject to the provisions of sections 6 and 26, have power, within such territorial limits as may from time to time be [fixed by the State Government] -

(a)....

(b)....

*Power to issue injunction. - (2) The said Court shall also, subject to the same provisions, **have power within the said limits, [where any impediment referred to in sub-section (1) is erected, or an attempt has been made to erect it, or], when any person is otherwise than by due course of law disturbed or obstructed, or when an attempt has been made so to disturb or obstruct any person,** in the possession of any lands or premises used for agriculture or grazing, or trees, or crops, or fisheries, or in the use of water from any well, tank, canal or water-course, whether natural or artificial, used for agricultural purposes, or **in the use of roads or customary ways thereto, to issue an injunction to the person [erecting or who has attempted to erect such impediment, or] causing, or who has attempted to cause, such disturbance or obstruction, requiring him to refrain [from erecting or attempting to erect any such impediment or], from causing or attempting to cause any further such disturbance or obstruction.***

Suits to be filed within six months. - (3) No suit shall be entertained by a Mamlatdar's Court unless it is brought within six months from the date on which the cause of action arose.

Cause of action. - (4) The cause of action shall be deemed to have arisen on the date on which the [impediment to the

natural flow of surface water or the] dispossession, deprivation or determination, of tenancy or other right occurred, or on which the [impediment,] disturbance or obstruction, or the attempted [impediment or] disturbance or obstruction, first commenced.”

(Emphasis Supplied)

21. Section 5 of the said Act clearly shows that Mamlatdar has got wide power of directing removal of obstruction. Thus, there is no substance in the submission raised by the learned counsel appearing for the Petitioners that the Mamlatdar has gone beyond the relief sought in the Petition. The relief sought in the case can be modified. In this particular case the case is specifically filed under Section 5 (2) of the said Act. Under Section 5 (2) wide power is conferred on the Mamlatdar. In the Petition itself, the Respondent No. 1 has averred that the Petitioners have obstructed the Respondent No. 1 from using the said road and for that purpose has recently planted trees. The same is established by the said panchanama. Therefore, Tahsildar has not committed any illegality for passing the direction of removal of obstruction, which has been passed by both Tahsildar and Sub-Divisional Officer concurrently.

22. Therefore there is no substance in the Writ Petition and the same deserves to be dismissed.

23. At this stage, Mr. Deshmukh prayed for continuation of ad-interim relief which is in operation till date. However, the factual position on record shows that the Petitioners were completely aware about the right of the Respondent No. 1 of user of said road as the same is mentioned in the record of rights. The user of the road is recorded and mentioned in the registered sale deed dated 22nd August, 2008 and also in the registered Sale-Deed dated 28th January, 2014 as well as in mutation entry No. 1297 dated 24th March, 2009 regarding the same Gat number. The factual position on record clearly show that the Petitioners have illegally obstructed the Respondent No. 1 from user of said road. Therefore no case is made out for continuation of ad-interim relief.

24. I find no illegality or perversity in the impugned orders. Therefore, the Writ Petition is dismissed with no order as to costs.

(MADHAV J. JAMDAR, J.)