

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

WRIT PETITION 4425 OF 2021

Baban @ Nainsukh Dagadu Kurandale & Anr. ...Petitioners
vs.
Dattu Sadashiv Kurandale & Ors. ...Respondents

Mr.Vivek V. Salunke for Petitioners.
Mr.K.N. Shermale for Respondents.

CORAM : ROHIT B. DEO, J.

DATED : 5 JULY 2022

P.C. :

1. The Petitioners are the defendants 1 and 2 in Regular Civil Suit 309/2008 which is instituted by Respondents 1 and 2 seeking declaration and perpetual injunction.
2. In the context of the controversy, it would be necessary to note the prayer clause of the plaint, which reads thus :

अ) तहसिलदार साहेब शिरूर यांचा क्र. रस्ता/५/एसआर/४३/२०१७ चा दि. १२/१०/२०१८ रोजीचा आदेश वादीवर बंधनकारक नाही असा ठराव करणेत यावा.

ब) तहसिलदार साहेब यांचेकडील क्र. रस्ता/५/एसआर/४३/२०१७ अर्जाचे दि. १२/१०/२०१८ रोजीचे आदेशानुसार प्रतिवादी नं. १ व २ यांनी वादीचे दावा मिळकतीमध्ये कोणत्याही प्रकारे अतिक्रमण करून पाण्याचा पाट तयार करू नये असा निरंतर ताकिद मनाईचा हुकुम व्हावा.

क) वादीचे दावा मिळकतीमधील शांततामय ताबेवहिवाटीस प्रतिवादी नं. १

व २ यांनी हरकत अडथळा करु नये असा निरंतर ताकीद मनाईचा हुकूम प्रतिवादी नं. १ व २ यांचे विरुद्ध करणेत यावा.

ड) इतर योग्य ते न्यायाचे हुकूम व्हावेत.

3. In the context of the relief claimed in the suit, the plaint averments may now be considered. Paragraph 1 describes the suit property which is agricultural field assigned Gat 3463 admeasuring 0.19 HR. Paragraph 2 avers that the suit property is a joint family property of the plaintiffs and defendant 3. Paragraph 3 avers that the defendants 4 and 5 are legal heirs of deceased Kondabai Kalamkar who are impleaded as formal parties to the suit. Paragraph 4 makes a reference to the proceedings initiated by defendants 1 and 2 under the Mamlatdars' Courts Act, 1906 (Act) and the relief sought therein. The plaintiffs aver that the application preferred by the defendants 1 and 2 under Section 5 of the Act seeks injunctive relief restraining the non-applicants in the proceedings under the Act from interfering with the water channel in the agricultural fields 3464 and 3467 owned by the defendant 1 and seeks mandatory order that the obstruction to the water channel in Gat assigned 3462, 3463 and 3466 be removed. It is further averred in paragraph 4 to the plaint that the plaintiffs are not impleaded in the proceedings under Section 5 of the Act and the relief prayed is granted on the basis of illegal panchanama.

Paragraph 5 then avers that the order passed by the Mamlatdar is contrary to the principles of natural justice and in paragraph 6 the said submission is reiterated. It is further averred in paragraph 7 that on the basis of the illegal order of the Mamlatdar, one month prior to the institution of the suit (the suit is instituted on 12.12.2018), the defendants attempted to enter into the suit property and tried to make water channel. According to the plaintiffs, when the defendants 1 and 2 were confronted,

the response was that they are entitled to do so in view of the order of the Mamlatdar.

4. It is on the basis of the averments noted supra, that the plaintiffs have sought the injunctive relief. Even if the entire plaint is holistically considered, it is clear that there is absolutely no averment in the plaint which seeks to establish infringement of any right as would entitle the plaintiffs to seek injunctive relief. The only averment in the plaint is that the Mamlatdar has rendered an illegal order under the provisions of the Act, and therefore, the plaintiffs are entitled to a declaration of invalidity of the said order and perpetual injunction. While there is a vague and ambiguous statement in the plaint that the panchanama is illegal, there is no further amplification. Notably, even according to the plaintiffs, the suit property is jointly owned by the plaintiffs and defendant 3 Shankar Sadashiv Kurandale. The plaintiffs themselves aver in paragraph 4 that the co-owner Mr. Shankar Kurandale was party to the proceedings under the Act.

5. The plaintiffs sought temporary injunction restraining the defendants 1 and 2 from acting pursuant to the order of the Mamlatdar. The defendants 1 and 2 filed their composite reply to the said application and written statement, generally denying every averment in the suit plaint. Responding to the averment in the plaint that the plaintiffs were not impleaded in the proceedings under Section 5 of the Act, the defendants asserted that the plaintiffs were not in cultivating position of the suit property Gat 6463 and it was the defendant 3 Mr.Shankar who was and is in exclusive possession. The defendants 1 and 2 further asserted that in the proceedings under Section 5 of the Act, the defendant 3 Mr.Shankar Kurandale did not assert that along with him the suit field is jointly owned

and cultivated by the plaintiffs herein. The defendants 1 and 2 then referred to the complaint lodged by defendants 1 and 2 against Pandit Dhondiba Kurandale and Atul Kurandale at Shirur police station alleging causing damage to the water channel. The defendants 1 and 2 contended that Mr. Pandit Kurandale and his son Mr. Atul Kurandale gave written statement accepting the existence of the water channel and contended that the damage was accidental and not deliberate. In the said statement, there is an undertaking not to cause any further damage or obstruction to the water channel. The defendants 1 and 2 then contended that in the year 2016, defendant 3 Mr. Shankar Kurandale and his son again damaged the water channel, and repeated the said acts in the year 2018 which led to the institution of the proceedings under Section 5 of the Act. The defendants 2 and 3 then referred to the proceedings and the spot inspection and emphasised that the order rendered by the Mamlatdar does not suffer from any infirmity.

6. The learned trial court allowed the application seeking temporary injunction observing that since the plaintiffs were not made parties to the proceedings under Section 5 of the Act, the order of the Mamlatdar is bad in law. No other reason is given by the learned trial judge for granting the injunctive relief. The appellate court has dismissed the appeal preferred by the defendants 1 and 2 challenging the order of injunctive relief, observing that since the plaintiffs were not party to the proceedings under Section 5 of the Act, the order of the Mamlatdar is not binding on the plaintiffs. The appellate court then engaged itself in analysing the order of the learned Mamlatdar and found fault with the findings recorded. In particular, the appellate court criticized the reliance placed by the Mamlatdar on the spot panchanama dated 24 July 2018 and observed that in the spot panchanama, there is no detailed description of

the length and width of the water channel. On such premise, the appellate court upheld the order of the trial court.

7. In my considered view, the courts below have clearly misdirected themselves in assuming that they were entitled to sit in appeal over the findings recorded by the learned Mamlatdar. The courts below clearly failed to appreciate the statutory scheme. Section 5 of the Act empowers the Mamlatdar to redress the grievances of the agriculturists in a speedy manner and the order is revisable under the provisions of Section 23(2) of the Act. However, Section 22 of the Act is clear manifestation of the legislative intent that any litigant who is aggrieved can approach the civil court for vindication of his rights and redressal of the grievances. The statutory scheme is that rights and liabilities of the parties to the lis have to be independently addressed and decided by the civil court uninfluenced by the order which may have been rendered by the Mamlatdar. In that sense, the adjudication under Section 5 of the Act is subservient to the adjudication by the civil court. However, the statutory scheme cannot be read or understood as conferring on the civil court the power to sit in appeal over the decisions under Section 5 of the Act. While the civil court can arrive at findings which are different and indeed opposite to the findings recorded by the Mamlatdar, the findings shall have to be recorded by the civil court on the basis of the material on record in the civil proceedings, and not on the basis of certain perceived infirmities procedural or substantive, in the proceedings decided by the Mamlatdar.

8. In **Mangalabai Vitthal Jadhav vs. Manisha Gokul Jadhav**¹, the learned Single Judge of this Court has considered the statutory regime thus:

1 **SAST 25760/2018 decided on 10-12-2018**

“11. Section 5 confers powers on the Mamlatdar to address the grievances and give quick relief to agriculturists in relation to the land used for agriculture. The orders passed under this Section are not appealable but are subject to revision. A plain reading of Section 22 would clearly indicate that the order passed under the Act are not conclusive and the aggrieved party can seek relief from the Civil Court. The provision of the Act demonstrate that the Civil Court is not bound by the decision of the authorities under the Mamlatdars Act. The party in whose favour the Mamlatdar has passed an order can enjoy such order only until such order or decision is otherwise decreed or ordered or such person is ousted by a competent Civil Court.

12. It is thus evident that the rights claimed before the authorities under the Act are transitory in nature and can be finally crystallized only in a civil remedy before the Civil Court. There can thus be no dispute that the party approaching the Civil Court is required to prove his case independently on its own merits and not use the Civil Court as an Appellate Forum to challenge the findings rendered by the Mamlatdar, as sought to be done by the appellants herein.”

I am in respectful agreement with the view of the learned Single Judge in **Mangalabai Vitthal Jadhav**.

9. The learned Counsel for the Respondent has invited my attention to the decision in **Shankar Appaji Ravan vs. Shivaji Janba Ravan**² Paragraph 10 of the said decision reads thus :

“10. The records thus reveal that the Applicants have already invoked the jurisdiction of the civil court in respect of the access, which is also the subject matter of proceedings under Section 5 of the Act. As stated earlier the proceedings before the Mamlatdar's Court are only summary in nature to provide speedy relief to the parties before they seek assistance of civil court. The Applicants having invoked the

2 WP 10797-2018 decided on 30.1.2019

jurisdiction of the civil court in respect of the said access and having also filed an application for interim relief, the bar under Section 26 (b) of the Act would be applicable. Hence, in view of filing of the civil suit, the learned Mamlatdar has no jurisdiction to entertain and decide the proceedings under Section 5 of the Act.”

The reliance placed on the said decision is clearly misplaced. All that is observed is that the jurisdiction of the civil court having been invoked, subsequent proceedings under Section 5 of the Act are not maintainable.

10. The Respondent then invites my attention to the decision in Second Appeal 111/2017 rendered by a learned Single Judge of this Court (Aurangabad Bench) on 11.1.2022. This decision also does not take the case of the Respondent any further. The learned Single Judge observes thus :

4. So far as the aspect regarding the jurisdiction of civil court to grant a relief touching an order passed by the Tahsildar under section 5(2) of the Act, true it is that an order of the Mamlatdar in such a proceeding is revisable under section 23(2) of that Act. However, conspicuously, section 22 of the Act clearly declares that any decision or order passed by the Mamlatdar would be subservient to the decision of a competent civil court in a proceeding preferred before it. Section 22 of the Act reads thus :-

“22. Subject to the provisions of section, 23 sub-section (2), the party in favour of whom the Mamlatdar issues an order for removal of an impediment of the party to whom the Mamlatdar gives possession or restores a use, or in whose favour an injunction is granted, shall continue to have the surface water upon his land flow unimpeded on to adjacent land or continue in possession or use, as the case may be, until otherwise decreed or ordered, or until ousted, by competent Civil Court:

Provided, firstly, that nothing in this section shall prevent the party against whom the Mamlatdar's decision is passed from recovering by a suit in a competent Civil Court mesne profits for the time he

has been kept out of possession of any property or out of enjoyment of any use :

Provided, secondly, that in any subsequent suit or other proceeding in any Civil Court between the same parties, or other persons claiming under them, the Mamlatdar's decision respecting the possession of any property or the enjoyment of any use or respecting the title to or valuation of any crop dealt with under the proviso to sub-section (1) of section 21, shall not be held to be conclusive.”

A bare perusal of the provision would clearly indicate that irrespective of the decision of the Mamlatdar under section 5(2), a party may approach a civil court and obtain any relief even contrary to the decision of the Mamlatdar setting it at naught.”

11. In my considered view, the orders impugned are clearly unsustainable. The learned trial Judge has recorded only one reason for granting injunctive relief which is that the plaintiff was not party to the proceedings under the Act. I have already noted that Mr. Shankar Kurandale who is co-owner was a party to the proceedings. That apart, the learned trial court has not analysed respective narratives independently and recorded no finding on the merits of the matter. The appellate court on the other hand has, like the trial court, held that the plaintiff was not party to the proceedings under the Act and additionally has found fault in the panchnama recorded by the learned Mamlatdar. Neither the trial court nor the appellate court appreciated the statutory scheme and have granted injunctive relief only in view of certain perceived lacunae in the adjudication by the Mamlatdar. In that sense, the courts below have virtually assumed jurisdiction akin to the appellate jurisdiction over the order of the learned Mamlatdar without making any attempt to consider the material on record in the civil suit independently and to render finding

on the existence of *prima facie* case and other relevant considerations. The orders are clearly erroneous and are set aside.

12. The petition is allowed in the aforesaid terms.

13. The interim injunction which is operating in favour of the Respondents shall continue to operate for the next six weeks.

(ROHIT B. DEO, J.)