

(28)-WP-193-22 (corrected).doc.
Corrected pursuant to speaking to minutes order dt. 14th July, 2022.

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

WRIT PETITION NO.193 OF 2022

Sarjerao Laxman Shete
Since deceased through legal heirs
Prakash Sarjerao Patil and Ors. ..Petitioners
Versus
Surendrakaur Hemraj Saini and Ors. ..Respondents

Mr. Vivek V. Salunke, for the Petitioners.
Mr. Satyajeet P. Dighe, for the Respondent No.1.
Mr. S. H. Kankal, AGP for Respondent Nos.2 & 3/State.

CORAM : NITIN W. SAMBRE, J.

DATE : 7th JULY, 2022

P.C.

1. Based on Section 5 of the Mamlatdar's Courts Act, the prayer of the respondent who was plaintiff before the Mamlatdar, order impugned dated 6th March, 2020 was passed thereby directing the petitioner to remove the impediment caused by digging the road passing through land Gat No.273/1, 274/1 and 281.

2. The said order is confirmed by the Revisional Authority i.e. The Sub Divisional Officer under Section 23 of the said provisions.

3. The contentions are, the plaint does not disclose cause of action as provided under Section 5 of the Act. It is further claimed that both these orders impugned lacks reasons

and as such, non-application of mind can be inferred.

4. Mr. Satyajeet Dighe, learned counsel for the respondent No.1 would support the order impugned thereby stating that even if specific cause of action is not pleaded in the plaint before the Mamlatdar, the same can be read from the claims put forth before the Mamlatdar during the course of hearing which was around two to three months prior to the date of lodging the plaint. According to him, as such the plaint claim was within limitation. He would also claim that even if the orders impugned do not contain happily worded reasoning, still fact remains that same is based on the Panchanama drawn and that being so, the orders impugned are sustainable.

5. I have appreciated the said submissions.

6. Perusal of the plaint lodged before the Mamlatdar does not disclose specific cause of action which ought to have pleaded pursuant to the provisions of Section 5 of the said Act.

7. Apart from above, perusal of both the orders depicts that both these orders are based on the Spot Panchanama. The said Spot Panchanama was in fact claimed to have been objected by the petitioner, still the authorities below have relied on the same for passing the order impugned.

8. What is expected of the Mamlatdar is to record findings on the existence of road and impediment created by the defendant to such plaint which findings are conspicuously

absent in the order impugned.

9. As such, the order impugned dated 6th March, 2020 passed by the Mamlatdar, so also the order dated 9th November, 2020 passed by the Sub Divisional Officer in revisional jurisdiction are hereby quashed and set aside.

10. The plaint stood restored to the file of Mamlatdar.

11. As prayed, liberty is granted to the respondent/plaintiff before the Mamlatdar to carry out amendment to the plaint and supply the amended copy of the plaint to the petitioner. Such amendment be carried out within a period of three weeks from today and amended copy of the plaint be served on the present petitioner within a period of three weeks thereafter. This Court expects Mamlatdar to record appropriate findings on the existence of road and impediment created.

12. Needless to clarify that the applicants/petitioners shall be at liberty to file written statement to the amended plaint within a period of three weeks from the date of receipt of such amended plaint.

13. This Court expects the Mamlatdar to decide the proceedings within a period of four months from today.

14. The petition as such stands partly allowed.

[NITIN W. SAMBRE, J.]