

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

WRIT PETITION N O.20 OF 2022

PETITIONERS : 1. Shankar Bhaurao Zade, aged 40,
Occ. Agriculturist, R/o. Bodad,
Tah. Wani, Dist. Yavatmal.

2. Mrs. Sunita Natthu Zade,
aged 50 years,

Both, occupation farmers,
R/o. Village Bodad, Tq. Wani,
Dist. Yavatmal.

//VERSUS//

RESPONDENT : Vinod Shrihari Zade
Age 45 years, Occ. Agriculturist,
R/o. Bodad, Tah. Wani, Dist. Yavatmal.

Mr. Nihalsing B. Rathod, Advocate for the Petitioners.
Mr. Saurabh A. Chaudhari, Advocate for the Respondent.

CORAM : **MANISH PITALE, J.**
DATE : **4th JULY, 2022.**

ORAL JUDGMENT

Rule. Rule made returnable forthwith. The writ petition is heard finally with the consent of the learned counsel appearing for the parties.

02] By this writ petition, the petitioners have challenged concurrent orders passed by the Tahsildar (Mamlatdar) and Sub-Divisional Officer under the provisions of Mamlatdars' Courts Act, 1906. By an order dated 13.11.2020, the Tahsildar allowed an application filed by the respondent under the provisions of the said Act and directed that the respondent be granted access way from the dhura of Gat Nos.12, 13, 15 and 16 to access his agricultural field in Gat No.14. The Sub-Divisional Officer dismissed the revision application filed by the petitioners and thereby, confirmed the order passed by the Tahsildar.

03] Mr. Rathod, learned counsel appearing for the petitioners submitted that the orders passed by the Tahsildar as well as the Sub-Divisional Officer, are without jurisdiction, for the reason that the nature of relief sought by the respondent in the facts of the present case, could not be said to be relatable to the provisions of the said Act. It was submitted that a proper appreciation of the application filed by the respondent would show that, in real terms, the respondent was seeking direction for a new access way to be granted to him in view of the fact that the earlier access, which he was using to reach his agricultural field, was blocked, due to certain events. It was submitted that under

the provisions of the said Act, the applicant was necessarily required to prove that there was an existing access way, which was blocked by the non-applicants before the Tahsildar (Mamlatdar), so that the said Authority could exercise the power of injuncting such non-applicant from creating obstruction. In the present case, according to the learned counsel for the petitioners, the admitted facts did not demonstrate such a situation and that, therefore, notwithstanding the spot inspection report on record, the Authorities under the said Act ought not to have exercised jurisdiction.

04] On the other hand, Mr. Chaudhari, learned counsel appearing for the respondent, submitted that if the contents of the application filed by the respondent, were to be appreciated in a holistic manner, it would be clear that there was a reference to an existing way and in the event the respondent was not to be granted relief in the said application, he would not be able to access his agricultural field at all. Therefore, according to the learned counsel for the respondent, particularly, when spot inspection report was clearly in favour of the respondent, the Tahsildar as well as Sub-Divisional Officer were justified in passing the order in favour of the respondent. On that basis, it was

submitted that this Court may not exercise jurisdiction in favour of the petitioners.

05] Heard learned counsel appearing for the parties and perused the material on record.

06] A perusal of the proviso to the aforesaid Act would show that the Tahsildar, acting as the Mamlatdar, can exercise jurisdiction to entertain an application of an aggrieved person, only when the pleadings and the material on record make out a case of existence of an access way, which has been blocked by the non-applicant. Therefore, it is a *sin qua non* for the applicant before the Tahsildar to demonstrate that such a way was existing and it was being used, which was blocked by the non-applicants, leading to the cause of action. This is further clear from Section 5(2) of the said Act, which gives power to the Mamlatdar to issue injunction against such person, who happens to block the existing access way.

07] In this backdrop, when the contents of the application filed by the respondent, purportedly under Section 5 of the said Act, are perused, it is found that the grievance of the respondent was that, since an access way from Gat No.9 hitherto available to

the respondent, was no-longer available because the said gat number was now being cultivated, he was required to look for another access way towards his field. It is in this backdrop that the respondent stated in the application that there was an access way existing earlier from the dhura of agricultural fields of the petitioner in Gat Nos.15 and 16. After making such a statement, the respondent further claimed that he was constrained to demand an access way from the agricultural fields of the petitioners (Gat Nos.15 and 16). The nature of the pleadings in the present case clearly indicate that the cause of action for the respondent was not blockage created by the petitioners, because the access way that was available to him from Gat No.9, which was otherwise in disuse, had suddenly become unavailable. The nature of the pleadings in the application moved before the Tahsildar, certainly did not qualify for exercise of jurisdiction under Section 5 of the said Act, which the Tahsildar in the present case failed to appreciate.

08] Even though the Tahsildar proceeded to conduct spot inspection and a report did come on record, when the very initiation of the proceeding could be said to be stillborn, further action undertaken by the Tahsildar was also rendered without

jurisdiction. The Sub-Divisional Officer completely failed to appreciate this aspect of the matter, while confirming the findings of the Tahsildar.

09] It is also relevant that while in the application, the respondent sought relief against the petitioners in the context of Gat Nos.15 and 16, the operative portion of the order of the Tahsildar also included Gat Nos.12 and 13, which was clearly beyond the relief sought by the respondent. Therefore, it is found that the Tahsildar failed to appreciate as to whether, in the light of the grievance sought to be raised by the respondent, power under Section 5 of the said Act could at all have been exercised.

10] This Court finds that the exercise of power by the Tahsildar in the present case under Section 5 of the said Act, in the facts and circumstances available on record, was rendered without jurisdiction and that, on this short ground, the impugned order deserves to be set aside.

11] Nonetheless, the concern of the respondent as regards lack of access to his agricultural field, cannot be ignored. This Court is of the opinion that the nature of relief sought by the respondent could correctly be raised under Section 143 of the Maharashtra Land Revenue Code, 1966. Therefore, appropriate

directions can be given to address the concern raised on behalf of the respondent.

12] In view of the above, the writ petition is **allowed**. The impugned orders are quashed and set aside. The respondent is granted liberty to invoke Section 143 of the aforesaid Code for seeking redressal of his grievance.

13] The respondent appears to have been accessing his agricultural field on the strength of the orders passed by the Tahsildar and the Sub-Divisional Officer. Hence, the order passed by this Court today is kept in abeyance for a period of four weeks, to give sufficient time to the respondent to avail of the remedy under Section 143 of the aforesaid Code, if so advised.

14] It is made clear that the order passed by this Court shall come into operation on the expiry of four weeks from today.

15] Rule is made absolute in above terms. Pending applications, if any, stand disposed of. No order as to costs.

(MANISH PITALE, J.)

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