

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

WRIT PETITION NO. 5356 OF 2021

Samadhan s/o. Uttamrao Jaybhaye

vs.

Shri. Ganesh Anasiram Jaybhaye and others

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr. P. S. Raut, Advocate for petitioner.
Mr. R. N. Ghuge, Advocate for respondent Nos.1 & 3.
Mr. D. P. Thakare, Addl. GP for respondent Nos.4 & 5.

CORAM : MANISH PITALE J.

DATE : 11/04/2022

By this writ petition, the petitioner has challenged concurrent orders passed by the Naib Tahsildar and the Sub Divisional Officer (SDO) under the provisions of the Mamlatdar Courts Act, 1906, whereby an application filed by the respondent Nos.1 to 3, under Section 5 of the aforesaid Act has been granted in favour of the petitioner. The said respondents claimed that they had been using an approach way from the Southern side of a Nala running East to West through the land belonging to the petitioner to approach their field in Gat No.47. It was their case that about a month prior to filing of said application, the petitioner created obstruction

and that therefore, cause of action had accrued in their favour.

2. As noted above, the respondent Nos. 1 to 3 filed the aforesaid application under Section 5 of the said Act, seeking a direction to the petitioner to remove obstruction created in a way that they had been using to approach their respective fields in Gat no.47. The said respondents claimed that they have been using the said way on the Southern side of Nala running East to West along the Northern border of Gat No.47. It was claimed that they had access to the aforesaid approach way from the Mehuna Dagadwadi Road, running along the Western border of Gat No.47 in the South to North direction. This was disputed by the petitioner who claimed that the approach way for the said respondents was in fact a tractor/cart way on the Northern side of the Nala and therefore, the application deserved to be rejected.

3. The Naib Tahsildar, as the Mamlatdar, passed order dated 08/07/2020 allowing the application of the said respondents and directed the petitioner to remove the obstruction, so as to make the said approach way available to the said respondents. While passing the said order, the Naib

Tahsildar relied upon a spot inspection report dated 25/06/2020.

4. Aggrieved by the said order, the petitioner filed revision application before the SDO. By order dated 15/11/2021, the SDO dismissed the revision application, thereby confirming the order of the Naib Tahsildar.

5. Aggrieved by the same, the petitioner filed the present writ petition in which notice was issued and interim order was granted in favour of the petitioner. While granting interim order, this Court recorded that earlier spot inspection reports prepared by the Circle Officer and the Talathi were ignored by the Naib Tahsildar while passing the impugned order.

6. Mr.Raut, learned counsel appearing for the petitioner, relied upon the spot inspection reports prepared by the Talathi and the Circle Officer, contend that the said reports clearly falsified the stand of respondent Nos.1 to 3. It is further contending that the inspection carried out on 25/06/2020 by the Naib Tahsildar was only with a view to favour respondent Nos.1 to 3 and that the contents thereof were also vague and no positive order could have been passed in favour of the said

respondents, on the basis of the said report dated 25/06/2020. Attention of this Court was invited to a google map also in support of the contentions raised on behalf of the petitioner. It was submitted that the impugned order deserves to be set aside.

7. On the other hand, Mr.Ghuge, learned counsel for respondent Nos.1 to 3 submitted that under Section 19 of the aforesaid Act, the Mamlatdar i.e. Naib Tahsildar in the present case, had the power to personally inspect the spot in order to ascertain the claims made by the rival parties. On this basis, it was submitted that the reports of the Talathi and the Circle Officer were of no consequence. It was further submitted that statements given by the owners of adjacent fields in the spot inspection carried out on 25/06/2020, clearly supported the stand of respondent Nos.1 to 3. It was further submitted that the aforesaid report was prepared in presence of Panchas, as also the rival parties including the petitioner herein, who had also signed the aforesaid report without any protest or objection. On this basis it was submitted that the writ petition deserved to be dismissed.

8. Heard learned counsel for the rival parties and perused the material on record. Considering the

fact that this Court is exercising writ jurisdiction under Article 227 of the Constitution of India, it needs to be examined whether the findings of the Authorities below are of such a nature that they deserve interference at the hands of this Court.

9. The nature of enquiry under the provisions of the Act by the Mamlatdar i.e. Naib Tahsildar in the present case, is necessarily of a factual nature and it is based on spot inspection carried out by the authorized person. There is substance in the contentions raised on behalf of the respondent Nos.1 to 3 that personal inspection and preparation of report in consequence thereof, has to be carried out by the Mamlatdar under Section 19 of the said Act. In the present case, on 25/06/2020, the Naib Tahsildar, exercising the power of the Mamlatdar under the provisions of the said Act, carried out the spot inspection in the presence of the rival parties, as also Panchas.

10. A perusal of the said report shows that although it is mentioned at one place that on the Southern side of the Nala from the field of the petitioner, way or road is not seen, yet, it is stated that such way appears to have been completely ploughed. It is then stated that there are certain

obstructions seen in the portion of the petitioner in Gat No.47 and that there are markings of a 6 feet wide road in Gat No.47. It is then stated that the agriculturists having their fields in Gat No.47 did state that the way for approaching their fields did exist in Gat No.47. On the basis of the aforesaid report, the Naib Tahsildar came to the conclusion that the approach way as claimed by respondent Nos.1 to 3 to approach their fields did exist and accordingly, the petitioner was directed to remove the obstructions. The SDO agreed with factual findings rendered by the Naib Tahsildar in that regard.

11. In order to appreciate the contentions raised on behalf of the petitioner, this Court perused the village map, as well as the map annexed with the report of the Naib Tahsildar dated 25/06/2020 and it is found that the fields of respondent Nos.1 to 3 in Gat No.47 are landlocked, in the sense that there is a Nala flowing on the Northern side and the Eastern side of the field. The approach to their fields is necessarily through the field of the petitioner, also located in Gat No.47. It could not be disputed on behalf of the petitioner that Mehuna Dagadwadi Road running on the Western side of Gat No.47 in South to North direction did touch upon the approach way on the Southern side of the Nala as claimed by

respondent Nos.1 to 3. Insistence of the petitioner that the approach way existed on the Northern side running along the Nala from West to East cannot be accepted, interalia, because the petitioner was unable to support his contention that the Nala is dry throughout the year and that therefore, access is very much possible from the Northern side of the Nala into the fields of the respondent Nos. 1 to 3.

12. In any case, since the Naib Tahsildar as well as the SDO had returned findings of facts based on spot inspection report to which the petitioner was also signatory and the findings rendered on the basis of such material appeared to be reasonable, no case is made out on behalf of the petitioner for interference in the present writ petition.

13. Even otherwise, as pointed out by learned counsel for respondent Nos.1 to 3, the findings rendered in proceedings under the provisions of the said Act would ultimately be subject to appropriate proceedings that can be initiated before the Competent Civil Court by the aggrieved party under Section 22 of the said Act.

14. Considering the aforesaid circumstances, this Court is of the opinion that the writ petition

deserves to be dismissed. Accordingly, the writ petition is dismissed.

JUDGE