

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 985 OF 2020

1) Mahesh s/o Namdeorao Parbat,
Aged about 39 years,
Occupation – Agriculturist,

2) Sanjay s/o Namdeorao Parbat,
Aged about 41 years,
Occupation – Agriculturist,

Both R/o Jamni, Tahsil – Hinganghat,
District – Wardha.

.... **PETITIONERS**

VERSUS

1) Deputy Collector, Wardha.

2) Naib-Tahsildar, Hinganghat,
Tahsil – Hinganghat, District – Wardha.

3) Laxman s/o Dnyaneshwar Borkar,
Aged about 41 years,
Occupation – Agriculturist,

4) Moreshwar s/o Dnyaneshwar Borkar,
Aged about 43 years,
Occupation – Agriculturist,

5) Eknath s/o Gulab Kamdi,
Aged about 46 years,
Occupation – Agriculturist,

6) Shrawan s/o Gulab Kamdi,
Aged about 48 years,
Occupation – Agriculturist,

7) Pralhad s/o Gulab Kamdi,
Aged about 51 years,

Occupation – Agriculturist,

Nos.3 to 7 R/o Jamni, Tahsil -
Hinganghat, District – Wardha.

.... **RESPONDENTS**

Mr. Pushkar Deshpande, Counsel h/f. Mr. D.R. Khapre, Counsel for the
petitioners,
Mr. K.L. Dharmadhikari, Counsel for respondents 1 & 2,
Mr. R. Bhandakkar, Counsel for respondents 3 to 7.

CORAM : **ROHIT B. DEO, J.**
DATED : **17th FEBRUARY, 2022**

ORAL JUDGMENT :

Heard. **Rule.** With consent, the petition is heard finally.

2. The petitioners are assailing the order dated 18-7-2018 rendered by the Mamlatdar in purported exercise of power under Section 5 of the Mamlatdar's Courts Act, 1906 (Act) whereby the application preferred by respondents 3 to 7 seeking removal of obstruction to the right of way, is allowed. The petitioners are further assailing the order dated 02-8-2019 rendered by the Deputy Collector, Wardha in Revision 2 M.C.A.23/2018 whereby the order of the Mamlatdar is confirmed.

3. While several grounds are raised in the petition, I am satisfied that the Mamlatdar decided the application under Section 5 of the Act, ignoring the statutory scheme, and a case for remand is made out.

Perusal of the statutory scheme would reveal that an application under Section 5 of the Act is treated as a suit and Section 7 of the Act mandates that the initiation of the proceedings shall be by a plaint. Considering the possibility that an illiterate or poor agriculturist or villager may not be acquainted with the niceties of the statutory provisions or may not have access to trained legal mind, Section 8 of the Act provides thus :

“8 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.”

4. A learned Single Judge of this Court in ***Gaurakshan Sansthan, Murtizapur v. State of Maharashtra and others, 2019(6) Mh.L.J. 473*** has articulated thus :

“5. Heard learned Counsel. The provisions of [Section 7](#) of the said Act require the proceedings to be commenced by way of a plaint. The particulars to be stated therein have been stipulated in [Section 7](#). Under [Section 9](#) of the said Act when the plaint does not contain the particulars specified in [Section 7](#) then the Mamlatdar has to examine the plaintiff on oath and ascertain from him whether the particulars stated are correct. These aspects have to be reduced in writing in the form of an endorsement on or annexure to the plaint. Under Section 10 of the said Act, the Mamlatdar

has to require the plaintiff to subscribe and verify the plaint in his presence in the manner specified. Section 12 thereafter empowers the Mamlatdar to reject the plaint if the plaintiff fails to furnish particulars as required by Section 7 within the time fixed under Section 9 of the said Act. These provisions therefore indicate the mandatory nature of the compliance to be done as stipulated by Section 7 of the said Act. It is only when the plaint is found to be admissible that the Mamlatdar can proceed with the adjudication on merits.

6. *Though the learned Counsel for the respondent No.3 sought to rely upon the provisions of Section 8 of the said Act, the procedure prescribed therein requiring the Mamlatdar to explain to the person presenting the petition the nature of reliefs that could be granted and the option given to the petitioner to express such desire has to be endorsed on the petition has not been shown to have been followed. There is no such endorsement as required under Section 8 of the said Act. In the reply filed by the petitioner before the Naib Tahasildar these objections were specifically raised but they have not been considered by both the Authorities. It is thus clear that the impugned orders are not sustainable on the ground that the necessary compliance with the provisions of Sections 7 and 9 of the said Act has not been done. Accordingly, the following order is passed:*

- (1) The order dated 10-8-2017 passed by the Naib Tahasildar and the order dated 6-11-2017 passed by the Additional Collector is set aside.*
- (2) The respondent No.3 is at liberty to file fresh application on the same cause of action by complying with provisions of Section 7 of the said Act. The report of the Talathi which is already on record can also be considered in such proceedings. By observing that the fresh proceedings if filed be decided on its own merits and in accordance with law expeditiously, the writ petition is allowed in aforesaid terms. Rule is made absolute with no order as to costs."*

5. *Adverting to the facts of the case, the plaint which is placed on*

record is not supported by an affidavit, as is the mandate of the statutory provisions. The spot inspection was conducted on 10-7-2018, the counsel for the petitioners/non-applicants entered appearance on 17-7-2018 and on the next date of hearing filed written submissions. The order-sheet records that the learned Counsel submitted that other than the written submissions filed, the non-applicants do not wish to “file further written submissions.” The order-sheet of 17-7-2018 does not refer to the next date. However, on the next date i.e. 18-7-2018 the order is passed.

6. I would not make any further observation lest there is some prejudice. Indeed no further observation is strictly necessary since manifestly the proceedings are conducted contrary to the statutory scheme. The observations of the learned Single Judge of this Court in *Gaurakshan Sansthan, Murtizapur v. State of Maharashtra and others* are apt and apply with all vigour.

7. The orders impugned are unsustainable.

8. I note that the learned Counsel for the original applicants-respondents 3 to 7 herein has emphasized that the petitioners have already instituted civil suit questioning the right of respondents 3 to 7

to use the way concerned. The extension of the submission is that due to the pendency of the civil suit, there is no propriety in upsetting the orders passed under the Act.

9. Firstly, if the order of the Mamlatdar is patently illegal and in my considered view, the order is patently illegal, the order cannot be permitted to hold the field. Secondly, the proceedings under the Mamlatdar's Court are initiated not by the petitioners who are the plaintiffs in the civil suit. The petitions are initiated by respondents 3 to 7. If respondents 3 to 7 are of the view that the civil Court would appropriately adjudicate on the respective rights, they are free not to prosecute their case before the Mamlatdar's Court.

10. Subject to what is observed supra, the orders impugned are quashed.

11. The matter is remitted to the Mamlatdar for fresh decision in accordance with law.

12. The Mamlatdar will give due consideration to the observations of this Court in *Gaurakshan Sansthan, Murtizapur v. State of Maharashtra and others*.

13. It is further clarified that the Mamlatdar would permit the parties to amend the pleadings and to file on record relevant material, if the parties wish to do so.

14. The petition is partly allowed and disposed of in the afore-stated terms.

JUDGE

adgokar