

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 903 OF 2023

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| 1. Ashok Murlidhar Patil
Age. 66 years, Occ. Agri., | .. | Petitioners |
| 2. Arunabai Ashok Patil
Age. 56 years, Occ. Agri., | | |
| 3. Jitendra Ashok Patil
Age. 33 years, Occ. Agri., | | |
| All R/o. Balad (Bk)., Tq. Pachora,
Dist. Jalgaon. | | |

Versus

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| 1. The State of Maharashtra
Through its Secretary,
Department of Revenue,
Mantralaya, Mumbai. | .. | Respondents |
| 2. The Collector, Jalgaon. | | |
| 3. The Sub-Divisional Officer,
Sub Division, Pachora,
Tq. Pachora, Dist. Ahmednagar. | | |
| 4. The Tahsildar,
Tahsil Officer, Pachora,
Tq. Pachora, Dist. Jalgaon. | | |
| 5. Deepak Barikrao Patil,
Age. 41 years, Occ. Agri.,
R/o. Balad (Bk.), Tq. Pachora,
Dist. Jalgaon. | | |

Mr.Y.V. Kakde, Advocate for the petitioners.

Mr.K.B. Jadhavar, AGP for respondent Nos. 1 to 4.

Mr.Pramod Kulkarni h/f. Mr. M.S. Sonawane, Advocate for respondent No.5.

CORAM	:	KISHORE C. SANT, J.
RESERVED ON	:	09.08.2023
PRONOUNCED ON	:	11.10.2023

ORDER :-

01. This petition is arising out of the proceedings under section 5 of the Mamlatdar's Courts Act. Present petitioners are original respondents in Vahivat Case No.42 of 2019, before the Tahsildar, Pachora, Dist. Jalgaon. Respondent No.5 had initiated proceedings seeking removal of obstruction allegedly caused by the present petitioners.

02. The Tahsildar rejected the Vahivat Case, whereas the learned Sub-Divisional Officer in revision allowed the application directing the petitioners to allow the respondent to use the road on the Northern side of land Gat No.195/1/B. The petitioners aggrieved by the said judgment are before this Court.

03. It is case of the petitioners that in the application prayer was made in respect of land Gat No.195/1. However, later-on by carrying out

amendment the number of land is corrected as 195/1/B. It is specific case of the petitioners before the Tahsildar that the respondent-original applicant is in habit of filing cases. He had filed one Criminal Case bearing No.117 of 2017 against the petitioners. The petitioners are acquitted and therefore present application is filed. There is no Gat No. 195/1 in existence. It is, thereafter, the respondent sought amendment and corrected Gat Number as 195/1/B. Other description of the property is also not correctly given.

04. It is submitted before this Court by learned Advocate Mr. Kakde that the Tahsildar has rightly rejected the application. However, in the revision the learned SDO failed to appreciate the case and has wrongly allowed the revision. He submits from map that there is no road seen going from Gat No.195/B. In the panchanama drawn by the Tahsildar, there is also no road seen. However, the learned SDO has wrongly drawn conclusion that the road is seen from the land. His further submission is that the respondent is not in possession of any property. He submits that the Tahsildar has also not followed procedure under sections 7 to 9 of the Mamlatdar's Courts Act. He has not framed points for consideration. He relied upon following judgments :-

1. Tarabai Ravsaheb Chaudhari & Ors., Vs. State of Maharashtra & Ors., 2022 DGLS (Bom.) 1807.
2. Nathu Bhandari Zambre Vs. State of Maharashtra, WP No.8162/2012.
3. Uttam Yadav Bansode & Anr. Vs. Additional Collector & Ors., WP No.1211/2020.
4. Bhagwat Namdeo Nirmal & Anr. Vs. Sub-Divisional Officer & Ors., WWP No.10346/2012.
5. Karbhari Abaji Londhe & Ors. Vs. Devidas Ukandrao Londhe & Ors., AO No.26/2014.
6. Vishnu Sukhdev Ghanvat & Ors. Vs. Collector & Ors., 2017(5) LJSOFT 115.
7. Abasaheb Laxman Shinde & Anr. Vs. Sub-Divisional Officer & Ors., WP No.2686/2014.

05. The learned Advocate for respondent No.5 Mr. Pramod Kulkarni submits that the respondent's predecessor in title purchased the land Gat No.195/2 vide sale-deed dated 18.03.1986. There is mention of road in the said sale-deed. He invited attention to the recitals in the sale-deed. He submits that there is already right of way in existence. The father of respondent No.5 purchased the said land by sale-deed dated 10.08.2015. In the said sale-deed also, there is recital about easementary right of way. From the map of the land it is seen that the land of the respondent is adjacent to land Gat no.195. The easementary way is seen blocked only to the extent of 30 ft. It clearly shows that there is right of way. He also invited attention to the photographs showing that in the road, there is obstruction created by keeping branches of the tree on the road. He submits that on facts both the Courts are concurrent. Only conclusion differs. The learned SDO has rightly

considered the facts. He has rightly observed that on both the sides there is road and recorded that access is clearly seen to have been blocked.

06. In rebuttal the learned Advocate for the petitioner invited attention to the map. He submits that there is no way seen in the map.

07. From the material on record, it is seen that the panchanama was drawn by the Tahsildar. In the panchanama, it is mentioned that there is way seen from the land Gat No.195/2/A till its Western side bandh. Same is blocked by taking crop in land Gat No.195/1B. The Tahsildar though has considered this panchanam, has concluded on the basis of panchanama that from land Gat No.195/1B, there is crop and it is not clear as to whether there was a way in existence or not and rejected the application. The learned SDO has observed that in the sale-deed in favour of father of respondent No.5 in the year 2015, there is recital showing right of way. The lands of both the parties were originally part of same Gat i.e. Gat No.195. On record, the respondent has placed documents to show how transfers have effected. In panchanama, it is clearly written that road appears to have been blocked. The conclusion of the Tahsildar was not correct. Since the land of both the parties

is part of the same original Gat number and there has to be one road from both the lands and has allowed the application. This Court finds that the conclusion of the learned SDO is rightly drawn looking to the position of both the lands in the map. There is no case of the petitioners that there is any other road available to the respondent to approach his land. Their only case is that there was no road in existence. Merely because criminal case was filed against the respondent, one cannot come to a conclusion that he would file a false case under the Mamlatdar's Courts Act. On the contrary, there is every reason to believe that the petitioners have stopped right of way of the respondent.

08. In the case of Tarabai (Supra), this Court has discussed about the manner in which proceeding under section 5 of the Act be conducted. The conscious use of the word plaint, provision for limitation, recording of evidence, rejection of plaint, formulation of point for determination are clearly indicative of the fact that the authorities under the Act should exercise the quasi judicial power strictly in accordance with the procedure prescribed by the Act which is analogous to the trial of a suit by a civil Court. In the case of Nathu (Supra), this Court has considered how the proceedings should be

conducted. In the case of Uttam (Supra) also this Court has specifically considered that in that case application was not in the form of plaint, there was no verification. In that case one of the petitioners was not arrayed as party respondent in the said application and in that view of the matter, the impugned judgment was quashed and set aside by granting liberty to the respondents therein to file fresh application on the same cause of action. In the case of Bhagwat (Supra) this Court recorded that the application was lacking in particulars as required under section 7 of the Mamlatdar's Courts Act. The original application was thus rejected. In the case of Karbhari (Supra) and other cases in a common judgment this Court has held that on every bandh there has to be right of access given. This Court finds that the ratio of said judgment is not applicable to the present case. In the case of Vishnu (Supra) this Court has given directions to clear bandh so that people can use that way as foot path. So far as judgment in respect of following proper procedure etc. this Court finds that in the present case the respondent had given all the particulars such as cause of action, particulars of the property and other particulars. The application was on verification. The learned Tahsildar had followed the procedure and thereafter has decided the application.

09. This Court has also seen the revision memo filed by the respondent. This Court finds that before the Tahsildar and SDO, no such pleas were taken. For the first time the petitioners have argued these grounds in this case. No such grounds are taken in the pleading of the petition. This Court, thus, finds that since the existence of way and the right to use the way are questions of findings of fact, this Court need not interfere with the same. The learned SDO has passed the order by considering panchanama and other material on record. No perversity is pointed out in the judgment of the learned SDO. This Court finds that there is no merit in the petition and the same deserves to be dismissed. The writ petition, therefore, stands dismissed with no order as to costs.

[KISHORE C. SANT, J.]