

CORAM : KISHORE C. SANT, J.

RESERVED ON : 20-06-2023

PRONOUNCED ON : 12-07-2023

JUDGMENT:

1. Heard.

2. The matter is taken up for final disposal by consent of the parties.

3. This petition is arising out of the proceeding under Section 5 of the Mamlatdar Courts Act. The petitioners are original opponents in the said proceeding, whereas the respondent Nos. 3 to 8 are original applicants in the application. The application was initially rejected by the Tahasildar, Bhokardan. Sub-Divisional Officer, Bhokardan in revision remanded the matter. After remanding the matter, the learned Tahasildar, Bhokardan has allowed the application and directed the authorities to remove the obstruction on the road by judgment and order dated 04-07-2022. The order passed by the

Tahasildar, Bhokardan dated 04-07-2022 is confirmed by the learned Sub-Divisional Officer, Bhokardan.

4. Facts in short as stated in the petition are that; the respondents have land in Gut Nos. 83 and 84 situated at village Palaskheda, Tq. Bhokardan, Dist. Jalna. The petitioners are the owners of land Gut No.94. Gut No.94 was originally owned by ancestors of respondent Nos. 6, 7 and 8. There was a way in existence to go to land Gut No. 83 and 84 from Gut No. 94. Said road is continued even after it was sold to the successors of the petitioners. On 30-05-2020 said road came to be blocked by the petitioners. The respondents, therefore, filed an application for removal of obstruction on the road.

5. Learned Tahasildar, Bhokardan directed the Circle Officer to carryout panchanama and to submit a report. The Circle Officer, submitted a report on drawing the panchanama. In panchanama it is stated that there appears to be road in existence which is obstructed. Panchanama is also signed by the

petitioner No.1. Rough map was also prepared. Learned Tahasildar on the basis of panchanama, argument and on the basis of pleadings held that there was no road in existence and rejected the application.

6. The respondents thereafter approached the learned Sub-Divisional Officer, Bhokardan. The learned Sub-Divisional Officer held that spot is not personally visited by the learned Tahasildar. It is observed that submission of adjoining road are not recorded and by order dated 07-12-2021 remanded the matter to the learned Tahasildar. Learned Tahasildar, after remand of the matter, visited the spot personally. Another panchanama was drawn. In the said panchanama again there is no specific fact is recorded about existence of the road. In the next round, learned Tahasildar again observed that there is no road seen in the map. No one has stated that there was a road in existence from Gut No. 94. However, application came to be allowed by the Tahasildar, Bhokardan by judgment and order dated 04-07-2022.

7. The petitioners therefore filed a revision application before the learned Sub-Divisional Officer, Bhokardan. This revision application came to be rejected. The petitioners are thus before this court by filing this writ petition.

8. Learned Advocate for the petitioners vehemently argued on legal point that the learned Tahasildar has not followed the procedure under Section 7 of the said Act as the application is not filed in the form of plaint. No specific cause of action is stated. In view of Section 8 no verification is recorded by the learned Tahasildar. There is also no compliance with section 11 and thus he submits that application itself could not have been entertained and same should have been rejected under Section 12 of the said Act. He further submits that the observations by the learned Tahasildar though are recorded in favour of the petitioners, however, order is passed against the petitioners. Panchanama also shows that there is alternative road. He relies upon the judgment in the case of Sudhir

Yashwant Dhangade VS Ankush Kashiram Bole and Ors reported in 2019 (2) Bombay CR 145. Another judgment he relied is the judgment in the case of Gaurakshan Sansthan Vs State of Maharashtra and Ors. reported in 2019(4) Bombay CR 643.

9. The learned Senior advocate for the respondents-original applicants submits that in the writ jurisdiction there is limited scope to this court to cause interference in the impugned judgment since both the judgments are concurrent in favour of the respondents. So far as the raising objection about the maintainability he submits that before the learned Tahasildar there is no objection raised about maintainability and therefore, now said question cannot be considered. He submits that learned Tahasildar has considered only submissions of the petitioners that there is no road available from Gut No. 94. About section 7 he submits that the Mamlatdar Courts Act is of 1906. The provisions are made to protect the interest of the farmers. Though section 7 requires that the application should be in the form of plaint however, said cannot be taken in the

sense of plaint under C.P.C. Section 8 is only when the Mamlatdar requires statements should be taken on only in case he deems fit. If learned Tahasildar finds that sufficient particulars are given, he need not ask for verification of the plaint. He has to ascertain and verify only facts as to whether there was road in existence and whether it is obstructed as alleged by the applicants. In view of section 8 it is for the learned Tahasildar to explain to the persons presenting the petition the nature of reliefs afforded by this court and shall enquire about desire of the petitioners to obtain relief. If he has not satisfied that the material particulars are not given in the plaint then he shall examine the plaintiff to ascertain whether this fact stated in the plaint are correctly stated in the plaint. Thus, he submits that non-compliance of the section 7 itself is not material. The procedure itself is provided only to give relief to the farmers. He submits that it is only in a case, if the learned Tahsildar requires the applicants to record verification and if applicant refuses only then the plaint is to be rejected. He submits that even it is not the case of the petitioners that they

requested the Mamlatdar for leading any evidence and the same is refused. He thus, submits that the petitioners have accepted the procedure and now same cannot be agitated.

10. Learned AGP submits that the learned Tahasildar had rightly framed the issues and has passed the judgment. Issue No.4 was initially wrongly decided and therefore, matter was remanded. Hence, opportunity was given to both the parties and no perversity is found and he prays for dismissal of the petition.

11. In the rejoinder petitioners submit that requirement under the Act must be fulfilled even if there is no objection, no formality, if the law requires that the plaint should be on the affidavit cannot be dispensed with only because there is no objection raised.

12. Before dealing with the submission this court finds it necessary to go through the material first. Considering the material on record, this court finds that learned Tahasildar,

Bhokardan while recording the evidence has recorded findings in favour of the petitioners even in the second round, however he allowed the application. Even after the remand, the panchanama does not specifically record anything about existence of the road. In panchanama what is recorded is only that the applicants informed that there was road in existence from Gut No. 94 whereas son of the petitioner No.1 informed that there is no road in existence. The learned Tahasildar however, has not recorded any specific finding about existence of the road. Issue No.2, he answered that road is seen as obstructed by putting stones on the road. This finding was recorded on the basis of panchanam drawn by the personal visiting the spot. He has also observed that map drawn by the land record department, however, he in the later part drawn the conclusion that there is no road in existence from Gut No. 94 and still, allowed the application. It is seen that learned Tahasildar has recorded contrary findings in the judgment while answering issue No. 2. Thus, there appears to be ambiguity and self contradictory observations in the judgment of the learned

Tahasildar. While considering the judgment of learned Sub-Divisional Officer on the basis of panchanama dated 25-03-2022 he drawn a conclusion that in Gut No. 94 road is seen to have been obstructed and has rejected revision of the respondents.

13. Thus, it becomes difficult to decide as from the maps also it is not seen that there is road from land Gut No. 94. This court thus finds that the earlier panchanama was by the Circle Officer and therefore, it was necessary that the learned Tahasildar himself should take a spot inspection and draw specific panchanam. However, even from the next panchanama dated 25-03-2022 after remand also there is nothing specifically recorded about existence of the road. Further the learned Tahasildar has also recorded contradictory findings in his judgment. Thus, it is difficult to come to a right conclusion. The observations of the learned Sub-Divisional Officer that from the panchanama dated 25-03-2022 it was found that road was obstructed by putting stones. So it appears to be contrary to the earlier panchanama. This court finds that it would proper to

remand the matter to the learned Tahasildar. Though the petitioners have relied upon the judgments, this court finds that matter requires remand. It is not necessary to discuss the judgments at this stage. In view of same, following order:-

ORDER

- a] The petition is partly allowed.
- b] The impugned order dated 23-01-2023 passed by the learned Sub-Divisional Officer, Bhokardan and the impugned order dated 04-07-2022 passed by the learned Tahasildar, Bhokardan are quashed and set aside.
- c] The matter is remanded to the learned Tahasildar, Bhokardan for fresh enquiry. The learned Tahasildar to draw a specific panchanama and record specific finding about existence of the road and to decide the matter afresh within a period of three months from today.

[KISHORE C. SANT, J.]