

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

48 WRIT PETITION NO.8822 OF 2022

**BHATA KHANDERAO PATIL
VERSUS
THE COLLECTOR AND OTHERS**

Mr. Prakashsing B. Patil, Advocate for the petitioner.
Mrs. D.S. Jape, AGP for the respondent/State.
Mr.R.M. Deshmukh, Advocate for respondent No.5.

CORAM : KISHORE C. SANT, J.
DATED : 13.07.2023

PC :-

01. Heard learned Advocates for the parties.
02. The petition is directed against an order passed by the learned Dy. Collector, Jalgaon in Revision under section 23(2) of the Mamlatdars' Courts Act dated 05.05.2022. By way of the impugned judgment and order, revision application No. 1 of 2022 came to be rejected. The revision was directed against judgment and order passed by the learned Tahsildar, Bhadgaon in Vahiwat Case No.2 of 2020 dated 28.06.2021 directing the petitioner to remove obstruction in the road that is being used by the respondents. It is case of the respondents that the respondents approached the Tahsildar by

filing application under section 5 of the Mamlatdar's Courts Act. It is specific case of the respondents that they were using the way to go to their field by the side of land of the petitioner i.e. from Gat No.142. It is further specific case that they were obstructed on 04.02.2020 from using the said way, by making the road narrow. There also took place some altercation and therefore respondents approached the Tahsildar. It is specifically observed that the road is in existence of the width 4 -5 ft. to go to the land of respondent No.5 i.e. Gat No.140/1. A map is also drawn showing the road. Thus, after hearing the parties and visiting the spot, the learned Tahsildar allowed the application by judgment and order dated 28.06.2021.

03. The petitioner initially filed revision before the learned Sub-Divisional Officer. The learned Sub-Divisional Officer, however, did not decide said revision, as he had no authority to decide the revision. The petitioner, therefore, approached the learned Collector, Jalgaon. The learned Collector directed the learned Dy. Collector to decide the revision. The revision is, thereafter, decided by the learned Dy. Collector (Revenue Administration). The learned Dy. Collector confirmed the order passed by the Tahsildar by specifically observing that the findings recorded by the learned Tahsildar are

recorded after going through the evidence and spot inspection report. He found that the order was rightly passed and thus rejected the revision of the petitioner. The learned Advocate for the petitioner submits that issue No.3 as to whether there is obstruction by the petitioner is also wrongly answered by the Court without any evidence. The petitioner is thus before this Court.

04. The main contention of the petitioner is that there was no cause of action to file application under section 5. He invited attention to para 7, wherein the respondent had expressed only apprehension that the petitioner would obstruct the road. He thus submits that the application before the learned Tahsildar was not maintainable for non-disclosure of cause of action. Though there was no cause of action disclosed, still the learned Tahsildar entertained the matter against section 7 of the Mamlatdar's Courts Act and prays to set aside the judgment and order. The second submission is that the revision ought to have been decided by the learned Collector himself, rather than by the Dy. Collector. He submits that the Dy. Collector and the SDO are of the same rank. If the learned Collector has observed that the SDO has no jurisdiction to decide the revision, he should not have directed the matter to be placed before the Dy. Collector. He thus submits that the order passed by

the learned Dy. Collector is without jurisdiction.

05. The learned Advocate for respondent No.5 Mr. Deshmukh points out from para 4 and 5 in his application before the learned Tahsildar that the date of cause of action was clearly disclosed as 04.02.2020. His case is also that the petitioner has narrowed down the road and thereby now the vehicles like tractor, truck carrying sugar-cane cannot pass through the road and it is thus an obstruction. He submits that the learned Tahsildar has personally visited the spot and has drawn the panchanama, which clearly shows that there is way to go to the field of the respondents. The map is not produced. In view of this, now the petitioner cannot assail the order passed by the learned Dy. Collector.

06. This Court, in view of the submissions, has carefully gone through the averments in the application. In para 7 though it appears that the application is filed on apprehension, however, in para 4 the cause of action is clearly spelt out. The date of cause of action is given as 04.02.2020. The learned Tahsildar has specifically framed the issue as to whether the cause of action is shown within six months and has answered the said issue in the

affirmative. This Court finds that the Tahsildar has rightly framed the issue and has answered the said issue. The learned Dy. Collector has also considered the aspect of limitation and has specifically come to a conclusion that the application was within limitation. So far as judgment in Writ Petition No. 4510 of 2003 is concerned, in that case it is held that the SDO cannot exercise powers conferred upon the Collector and therefore has no jurisdiction to decide the revision application under section 23(2A) of the Mamlatdars' Courts Act. However, in this case it is the Dy. Collector who had decided the revision. This Court finds that there is no jurisdictional error committed by the learned Dy. Collector.

07. The learned Advocate for the respondent relied upon judgment passed in Writ Petition No.387 of 2017 in the case of Prashant Prabhakar Rao Mukkavar Vs. The Sub-Divisional Officer and Ors., passed by Nagpur Bench of this Court, where specific question of law was framed as under :-

“Whether it is permissible for the Collector to delegate powers conferred on him by section 23(2) of the Mamlatdar Courts Act, 1906 to any Sub-Divisional Officer as defined by section 2(34) of the Maharashtra Land Revenue Code, 1966? If such delegation of power is permissible, whether such delegation would entitle the Sub-Divisional Officer to exercise jurisdiction under Section 23(2) of the Mamlatdar Courts Act, 1906?”

. The Division Bench by considering the definition of the Collector and the Court has specifically answered said question as that for the purpose of section 23(2) of the Mamlatdar's Courts Act, the Dy. Collector was Assistant Collector. Such delegation of power is permissible and would entitle him to exercise jurisdiction under sub-section (2) of Section 23 of the Act.

08. Thus, in view of the above, this Court finds that no case is made out to call for interference in the impugned order. The petition stands dismissed.

[KISHORE C. SANT, J.]