

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

32 WRIT PETITION NO.9042 OF 2022

1. Panditrao Wamanrao Shirsath,
Age; 63 years, Occ; Agri,
2. Rekha W/o Panditrao Sirsath,
Age; 55 years, Occ; Agri,

Both R/o; Bhagyalaxmi Apartment,
Tidke Nagar, Untwadi, Near bridge,
Nashik, Tq. & Dist. Nashik.

...Petitioners
(Original Respondents)

VERSUS

1. The Sub Divisional Officer, Shirdi,
Division Shirdi, Tq. Rahata,
Dist. Ahmednagar.
2. The Tahsildar, Kopargaon.
Tq. Kopargaon, Dist. Ahmednagar.
3. Ashok s/o Bajirao Wable,
Age; 63 years, Occ; Agri,
4. Ganpat s/o Bajirao Wable,
Age; 75 years, Occ; Agri,
5. Yashraj s/o Mahendra Wable,
Age; 19 years, Occ; Agri,
6. Mangal w/o Parashram Wable,
Age; 56 years, Occ; Agri,
7. Laxman s/o Parashram Wable,
Age; 36 years, Occ; Agri,
8. Sham s/o Parshram Wable,
Age; 33 yeas, Occ; Agri,

9. Mahendra s/o Sampatrao Wable,
Age; 50 years Occ; Agri,

All R/o; Shahajapur, Tq. Kopargaon,
District; Ahmednagar.

...Respondents
(Original Applicants)

...

Advocate for Petitioners : Mr.Gandhi Amol S.
AGP for Respondent Nos. 1 & 2/State : Mr.K.N.Lokhande
Advocate for Respondent Nos. 3 to 9 : Mr.Bhalerao Rajendrakumar D.

...

WITH

CIVIL APPLICATION NO. 4951 OF 2023
IN WP/9042/2022

1. Ashok s/o Bajirao Wable,
Age; 63 years, Occ; Agri,
2. Ganpat s/o Bajirao Wable,
Age; 75 years, Occ; Agri,
3. Yashraj s/o Mahendra Wable,
Age; 19 years, Occ; Agri,
4. Mangal w/o Parashram Wable,
Age; 56 years, Occ; Agri,
5. Laxman s/o Parashram Wable,
Age; 36 years, Occ; Agri,
6. Sham s/o Parshram Wable,
Age; 33 yeas, Occ; Agri,
7. Mahendra s/o Sampatrao Wable,
Age; 50 years Occ; Agri,

All R/o; Shahajapur, Tq. Kopargaon,
District; Ahmednagar.

...Applicants
(Original Applicants)

VERSUS

1. Panditrao Wamanrao Shirsath,
Age; 63 years, Occ; Agri,

2. Rekha W/o Panditrao Sirsath,
Age; 55 years, Occ; Agri,

Both R/o; Bhagyalaxmi Apartment,
Tidke Nagar, Untwadi, Near bridge,
Nashik, Tq. & Dist. Nashik.

...Non Applicants
(Original Respondents)

3. The Sub Divisional Officer, Shirdi,
Division Shirdi, Tq. Rahata,
Dist. Ahmednagar.

4. The Tahsildar, Kopergaon.
Tq. Kopergaon, Dist. Ahmednagar.

...Non Applicants
(Resp. Nos. 1 & 2 in WP)

...
Advocate for Applicants : Mr.Bhalerao Rajendrakumar D.
Advocate for Petitioner in WP : Mr. Gandhi Amol S
AGP for Respondent Nos. 1 & 2/State : Mr.K.B.Jadhavar

...

CORAM : KISHORE C. SANT, J.
DATE : 02.08.2023.

PER COURT :

1. Heard the learned Advocate for the parties. Taken for final disposal by the consent of the parties at the admission stage.

2. The petitioners approached this Court challenging the judgment and order passed by the learned SDO, Shirdi in Revision Application No. 34 of 2022 dated 28.06.2022 rejecting

their Revision Application. The petitioners had filed a Revision Application against the judgment and order passed by the learned Tahsildar, Kopargaon in Rasta Case bearing No. 01 of 2021 filed under Section 5 (2) of the Mamlatdar's Court Act. The petitioners are the original defendants in the Rasta Case No. 01 of 2021.

3. The original applicant Nos.1 to 3 are the owners of the land Gut No. 39, 46 42 and 37 which are on the Northern side of the land Gut No. 38 belonging to the petitioners.

4. The respondents approached the Mamlatdar's Court stating that the petitioners have obstructed their right of way to go to their field. The Mamlatdar conducted the spot inspection on 17.02.2022. In the panchanama it is recorded that the road appears to be obstructed and there is no any other way to go to the lands of the respondents. The petitioners have filed their say to the said case. It is the case of the petitioners that the respondents wants right of way in between the land Gut No. 38. There is no way in existence as held by the respondents. There is no obstruction created by them. There is alternate road available to the respondents. If at all the respondents wants to

use the road they can use the road from Northern side of the land. At that time applicant No. 3 was minor. No permission is sought from the Court to represent that minor. It is further objected on the ground that the panchanama is drawn when there was nation wide lock down in many parts of the Country and the panchanama could not have been carried out even an application filed on 28.01.2021 etc.

5. The learned Tahsildar after considering the spot inspection and submissions of the parties and map, recorded that there was way in existence as alleged by the respondents, however, the same is obstructed by the petitioners and on that basis allowed the application of the respondents.

6. The learned SDO also considered the map, submissions and panchanama and has held that the way is obstructed and by recording the same rejected the applications of the respondents.

7. The learned Advocate for the petitioners submits that there is no compliance of Section 7 of the Mamlatdar's Court Act. No specific cause of action is given in the plaint. There is no pleadings giving the particulars as required under Section 7

of the Mamlatdar's Court Act. He further submits that in view of Section 9, it was necessary for the Mamlatdar to examine the plaintiffs on oath and to ascertain the particulars as specified in Section 7 of the Act, however, the same is not done. The proceedings itself is thus, taken wrongly. The judgment in such proceedings itself cannot be sustained in the eyes of law. He further submits that in the panchanama there is specific mention that no any road is seen to go to the field of the petitioners. He submits that this observation clearly shows that there was no way in existence and still the learned Tahsildar has passed an order allowing the applications of the respondents.

8. The learned Advocate for the respondents, however, submits that both the authorities below have rightly considered the panchanama and the pleadings of the parties. In panchanama it is clearly recorded that there was a road, though not in specific words, but the boundaries of the road are clearly mentioned. It clearly shows that there is in fact a way in existence. The words of the panchanama in the latter part shows that there is no alternative way to go to the land of the petitioners.

9. The learned AGP also supports the orders passed by both the authorities.

10. Considering the arguments and submissions this Court finds that if there is failure to give particulars as per Section 7 of the Act, it is for the Mamlatdar to inform the petitioners and take the particulars from the plaintiffs on oath and to ascertain the particulars specified in Section 7.

11. Section 12 of the Act prescribes that if there is failure on the part of the plaintiffs to make statement on oath under Section 9 of the Mamlatdar's Court Act, the Mamlatdar shall reject the plaint.

12. In this case, it is found that the Mamlatdar has not asked the plaintiff to give any statement on oath. Failure of Mamlatdar, cannot be taken to deprive the right of a person to get the way. Though the learned Advocate for the petitioners relied upon the judgment of this Court reported **in 2022 DGLS (Bom.) 3767** in the case of Taraba w/o Sopan Tathe v. Vandana w/o Gajanan Tikare and Others, wherein this Court has held that

“When there is no verification the procedure prescribed under Section 7, 9,11 and 12 of the said Act is not followed by the authorities and in that case the order was quashed and set aside.”

13. In that case it is found that the petitioner therein had filed statements of the adjoining agriculturists. However, an opportunity to cross-examine was not given to the respondents. In the present petition no case is made out that the petitioners wanted to examine any witness or cross-examine any witness produced by the respondents and a permission is denied. As a matter of fact, the respondents had also not examined any witness. This Court finds that it is only in such cases and whether any of the parties filed an application to the Tahsildar and demands an opportunity to lead the evidence, this provision would be attracted. In this case, even in the Revision Application no such grounds are taken. The grounds shown to have been taken are not specific. The petitioners had an opportunity to pray before the Mamlatdar for such an opportunity. This Court finds that therefore, these judgment are not applicable to the present case on facts.

14. The submissions of the petitioners that when there was no right of way in existence it would be an exercise under

Section 143 of the MLRC, if new road was to be given then it was necessary to undertake the proceedings under Section 143 of the MLRC. This Court finds that an application was filed under Section 5 (2) and the Tahsildar decided the same under Section 5 (2) and therefore, there is no question to approach the Tahsildar under Section 143 of the MLRC. It is not the case of the respondents that they are claiming any new way to go to their field. The petitioners relied upon the map that the road is shown from the middle of the land Gut No. 38 and certainly no road can be given from the middle of the land. Considering all these facts, this Court finds that both the authorities have taken decision on the basis of panchanama and on the basis of material available before them. When the Tahsildar himself has visited the spot and has recorded the panchanama, this Court finds there is no reason to interfere with this finding of fact. This Court, thus, finds that the petition deserves to be dismissed and the same is dismissed with costs.

15. At this stage, the learned Advocate for the petitioners prays for continuing interim relief i.e. granted by this Court. It is opposed by the learned Advocate for the respondents. However, there was stay in the matter and even while this

petition was pending, this Court finds that it would be in the interest of justice to continue the same relief further for a period of four weeks. In view of the disposal of this petition, the pending Civil Application No. 4951 of 2023 stands disposed off.

(KISHORE C. SANT)
JUDGE

mahajansb/