

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

947 WRIT PETITION NO.10707 OF 2021

- 1) Shri. Dagadu s/o laxman Bangal,
Age 60 years, Occu: Agri.,
- 2) Shri. Sagar s/o Dagadu Bangal,
Age 31 years, occu: Service,
- 3) Shri. Amol s/o Dagadu Bangal,
Age 35 years, occu: Service,

All R/o. Mahenduri, Tq. Akole,
Dist. Ahmednagar.

...Petitioners

VERSUS

- 1) The Sub-Divisional Officer,
Sangamner Region, Sangamner,
Tq. Sangamner, Dist. Ahmednagar.
- 2) The Tahsildar Akole,
Tq. Akole Dist. Ahmednagar.
- 3) Shri. Kailas s/o Rambhau Fargade,
Age 57 years, occu:Service and Agri.,
- 4) Shri. Bhausahab s/o Rambhau Fargade,
Age 59 years, Occu: Farming,
- 5) Shri. Vijay s/o Tukaram Arote,
Age 56 years, Occu: Agri.,
- 6) Shri. Badshah s/o Tukaram Arote,
Age 42 years, occu: Agri.,
- 7) Shri. Balu s/o Dattu Fargade,
Age 41 years, Occu: Agri.,

- 8) Shri. Rajaram s/o namdev Arote,
Age 64 years, Occu: Agri.,
- 9) Shri. Dashrath s/o Baburao Arote,
Age 43 years, occu: Agri.,
- 10) Shri. Bharat s/o Baburao Arote,
Age 37 years, occu: Agri.,
- 11) Shri. Santosh s/o Rajaram Arote,
Age 40 years, Occu: Agri.,
- 12) Shri. Chandrabhan s/o Shivram Arote,
Age 62 years, Occu: Agri.,
- 13) Sau. Anusaya w/o Shivram Arote,
Age 85 years, Occu: Nil,
- 14) Sau. Meena w/o Arun Arote,
Age 51 years, Occu: Household,
- 15) Sau. Chandrabhaga w/o Baburao Arote,
Age 75 years, Occu: Nil,

All R/o Mehenduri, Tq. Akole,
Dist. Ahmednagar.

...Respondents

.....

Advocate For Petitioners : Mr. A. A. Nimbalkar
AGP for Respondents-State : Mr. G. O. Wattamwar
Advocate FOR Respondent Nos.3 to 15 : Mr. V. Y. Bhide

.....

CORAM : ARUN R. PEDNEKER, J.

**Date of Reserving the Judgment :
08/02/2023.**

**Date of Pronouncing the Judgment:
23/02/2023.**

JUDGMENT :

1) Rule. Rule made returnable forthwith. By consent, heard all the parties finally.

2) By the present writ petition, the petitioners are challenging the order dated 26/03/2021, passed by the Sub-Divisional officer, Sangamner, Dist.Ahmednagar, in Revision Application No.26 of 2021 whereby the Revisional authority was pleased to dismiss the revision filed by the petitioners against the order dated 28/07/2020, passed by the Tahsildar (Mamlatdar), Akole Tq.Akola, Dist.Ahmednagar, in Rasta Case No.39 of 2018.

3) Facts in brief can be summarized as under :-

The petitioners are the owners and possessors of land admeasuring 73 Are in Survey No.39/7 in village Mehenduri Tq. Akole, Dist. Ahmednagar. The respondent Nos.3 to 15 have their land situated in Survey No.94 and 96. The respondent Nos.3 to 15 instituted a Rasta Case bearing No.39 of 2018 against the petitioners under Section 5 of the Mamlatdars' Courts Act before the Tahsildar titled as under Section 143 of the Maharashtra Land Revenue Code, 1966.

4) It was the contention of the Appellants in the said application that the petitioners had obstructed their road on 29/06/2018 and petitioners be directed to remove the obstruction on the said road. The appellants, thereafter, realised that there is some error in the application and although the application was filed in the nature of suit seeking relief available under Section 5 of the Mamlatdars' Courts Act, it was wrongly titled as an application under Section 143 of the Maharashtra Land Revenue Code. Therefore, they sought amendment to the application and by order dated 07/02/2019 an amendment was carried out to the application. By virtue of the said amendment, the title mentioned in the application was changed and the application was treated to be as an application under Section 5 of the Mamlatdars' Courts Act.

5) The proceedings were conducted before the Tahsildar/Mamlatdar and on examination of the material, the Mamlatdar direct to remove the obstruction on the road passing through the petitioners land to the respondents land. The petitioners filed revision before the revisional authority challenging the order passed by the Mamlatdar under Section 5 of the

Mamlatdars' Courts Act. The revisional authority by order dated 26/03/2021 dismissed the revision application filed by the respondents. Hence, the present writ petition.

6) The petitioners contention is as under :-

(i) The application under Section 143 of the Maharashtra Land Revenue Code ought not to have been converted into application under Section 5 of the Mamlatdars' Courts Act.

(ii) That the procedure contemplated under Section 7 to 10 of the Mamlatdars' Courts Act are not followed.

(iii) That the witnesses were not cross examined by the petitioners and were not made available for the cross examination, and as such, the orders passed by the authority suffers from the infirmities.

(iv) Finding recorded by both the authorities are perverse.

7) The learned Advocate for the petitioners relied on the following decisions :-

(a) Writ Petition No.702 of 2017, Bhimrao s/o Namdeo Dole Vs. the Sub-Divisional Officer, Darwha and others, decided on 16/10/2019, (Nagpur Bench).

(b) Gaurakshan Sansthan, Murtizapur Vs. State of Maharashtra and Ors., reported in 2019(3) ALL MR 849,

(c) Writ petition No.2086 of 2013, Baburao s/o Maruti Sawant Vs. Hanumant s/o Yada Naik and Ors., decided on 07/07/2017, (Aurangabad Bench)

(d) Krushna s/o Damaji Choudhari and another Vs. Additional Commissioner, Nagpur Division and others, reported in 2012(1) Mh.L.J. 795, And

(e) Sudhir Yashwant Dhangade Vs. Ankush Kashiram Bole and Ors., reported in 2019(1) ALL MR 825.

8) The learned Advocate for respondents submits that the application which was filed as Rasta Case No.39 of 2018 had sought reliefs available under Section 5 of the Mamlatdars' Courts Act and was wrongly titled as application under Section 143 of the Maharashtra Land Revenue Code and that all the requirements of the plaint of the Mamlatdars' Courts Act were followed. The date of cause of action was mentioned in the application that there was obstruction of the road and then the prayer was made for removal of obstruction. The above facts would indicate that the application was under the Mamlatdars' Courts Act, however inadvertently the same was mentioned under Section 143 of the Maharashtra Land Revenue Code, and as such, a prayer was made to treat the said application

as under Section 5 of the Mamlatdars' Courts Act and necessary amendments were made.

9) The learned Advocate for the respondents submits that the provisions of Section 7 to 10 are not mandatory in nature and in any event if they are held to be mandatory in nature, then they are curable and that the respondents may not be non-suited on that count.

10) The learned Advocate for the respondents relied on the following case laws :-

- (a) Shrikrishna Sheshrao Dane and Anr. Vs. Vasant Ramrao Tayade and Anr., reported in 2018 (1) ALL MR 397,*
- (b) Shankar Govindrao Sarnaik and Anr. Vs. Sub Divisional Officer Washim and Ors., reported in 2012(3) ALL MR 669,*
- (c) Karbhari s/o Abaji Lodhe Vs. Mr. Devidas s/o Ukandrao Lodhe, reported in 2014 (1) Bom.C.J.738,*
- (d) Bhagwat Namdeo Nirmal and Anr. Vs. Sub-Divisional Officer, Shrirampur Division and Ors., reported in 2013 (5) LJSOFT 30.*

11) Having considered the rival submissions, the issue that arises for consideration, in the instant case is whether the application titled as under Section 143 of the Maharashtra Land Revenue Code could

have been converted into an application under Section 5 of the Mamlatdars' Courts Act. With reference to the above cited Judgments, this Court in the case of *Krushna s/o Damaji Choudhari (Supra)* has held as under :-

"9. There is a definite distinction between the powers conferred under the Mamlatdars' Courts Act upon the Tahsildar and the powers conferred upon the Tahsildar under section 143 of the MLR Code. Section 143 of the MLR Code deals with the right of way over the boundaries. There is no limitation prescribed for filing such application, nor any details regarding contents of such application are provided. The remedies are provided against this order either of appeal or revision under the provisions of MLR Code or a civil suit under sub-section (4) of section 143 of MLR Code. As against this, the application under section 5 of the Mamlatdars' Courts Act is treated as a plaint in a suit and the power of grant of injunction to remove obstruction is specifically conferred upon the Mamlatdars' Courts. Sub-section (3) of section 5 therein provides a period of limitation for filing such a suit and section 7 of the said Act provides for the contents of plaint. There is revision provided under section 23 of the Mamlatdars' Courts Act to the Collector and there is specific bar of an appeal. In view of this, the application under section 143 of the MLR Code cannot be treated as a suit under section 5 of the Mamlatdars' Courts Act and the Tahsildar exercising powers under section 143 cannot direct removal of obstruction."

12) In case of *Krushna s/o Damaji Choudhari (Supra)*, this Court was considering the issue that while considering application under Section 143 of the MLR Code, whether power under Section 5 of the Mamlatdars' Courts Act can also be invoked or exercised.

13) In the instant case, the facts are completely different. The application originally filed under Section 5 of the Mamlatdars' Courts Act was wrongly titled as under Section 143 of the MLR Code. The application had all the necessary pleadings and prayer under Section 5 of the Mamlatdars' Courts Act. Thus an amendment was prayed to correct the title of the application and was granted, and thereafter, the original application was considered as an application under Section 5 of the Mamlatdars' Courts Act. This is not a case where while deciding application under Section 143 of the MLR Code, the powers of Section 5 of Mamlatdars' Courts Act are exercised.

14) Thus, the application was wrongly titled and the amendment was allowed, the relief claimed was also within the limitation period. In view of the same, I see no error in the order passed by the authorities below in considering the application under Section 5 of

the Mamlatdars' Courts Act.

15) As regards the violations of Section 7 to 9 of the Mamlatdars' Courts Act are concerned, this Court in the case of *Bhimrao s/o Namdeo Dole (Supra)* has held as under :-

"5. On hearing the learned counsel for the parties, it is found that the application moved by the respondent nos.3 to 6 is not in accordance with the provisions of Section 7 of the said Act. That application is not supported by any affidavit. The procedure as prescribed by Sections 9 and 10 of the said Act has also not been followed. Similar issue was considered by this Court in Gorakshan Sansthan, Murtijapur Versus State of Maharashtra & Others [2019(3) All MR 849] wherein it was held that in absence of mandatory compliance with these requirements, there was no jurisdiction with the Authorities under the provisions of the said Act to adjudicate that application. In the light of these defects, the impugned orders are found to be bad in law. They are therefore liable to be set aside."

16) This Court also in the case of *Gaurakshan Sansthan, Murtizapur (Supra)* held as under :-

"5. 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”.

17) From the aforesaid Judgments, it appears that it is mandatory that the proceedings have to commence by way of a plaint. In the event the plaint does not contain the particulars of Section 7 then the Mamlatdar has to examine the plaintiff on oath and ascertain from him whether correct particulars are stated. This aspect has to be reduced in writing in the form of an endorsement. Further, under Section 10 of the Mamlatdars' Courts Act, the Mamlatdar has to verify the plaint in his presence. However, in

the instant case the plaint is not verified and that the Mamlatdar has failed to follow the procedure contemplated under Section 8 to 10 of the Mamlatdars' Courts Act.

18) The order dated 26/03/2021, passed by the Sub-Divisional officer, Sangamner, in Revision Application No.26 of 2021 and the order dated 28/07/2020, passed by the Tahsildar (Mamlatdar), Akole in Rasta Case No.39 of 2018 are hereby quashed and set aside. The matter is remitted back to the Tahsildar to decide the same in accordance with the law after following the procedure contemplated in Section 7 to 10 of the Mamlatdars' Courts Act by giving opportunity to the parties to lead evidence and cross-examine the witnesses, if any.

19) The Mamlatdar to decide the proceedings as expeditiously as possible and in any event within a period of three months from the receipt of the order, as the matter is pending for a long period of time.

20) Both the parties to appear before the Mamlatdar on 03/03/2023 so as to enable the Mamlatdar to give further dates in

the matter.

21) To avoid any further disputes, 'Status-quo' as on today be maintained till the decision of the Mamlatdar under Section 5 of the Mamlatdars' Courts Act, and the Tahsildar to ensure that the 'Status-quo' is not altered during the pendency of the proceedings. In view of the above, writ petition stands disposed of. Rule made absolute in above terms.

(ARUN R. PEDNEKER, J.)

vj gawade/-.