

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

WRIT PETITION NO. 11885 OF 2022

Narayan s/o. Sahebrao Garad

....Petitioner

Versus

Tatyrao s/o. Sarjerao Garad and others

....Respondents

...

Mr. A.D. Gade, Advocate for the petitioner.

Mr. P.S. Gaikwad, Advocate for respondent Nos. 1 & 2.

Mr. P.S. Dikle, Advocate for respondent No. 3.

Mr. R.R. Khandebharad, Advocate for respondent No. 4.

Mr. K.N. Lokhande, Advocate for respondent Nos.5 & 6.

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CORAM : ARUN R. PEDNEKER, J.

DATE : 30.08.2023.

ORAL ORDER :

1. Heard the learned counsel for the respective parties.
2. By the present writ petition, the petitioner is challenging the judgment and order dated 29.7.2022 passed by the respondent No. 5 – Sub Divisional Officer, Ambad, District Jalna in File No. 2022/ROR/Appeal/06, thereby dismissing the appeal filed by the petitioner under section 23 (2) of the Mamlatdars' Courts Act, 1906 and confirming the judgment and order dated 6.10.2021 passed by the Tahsildar, Ghansavangi, District Jalna in No. 2021/R.O.R./C.R.-01.
3. The application was moved by the respondents herein for removal of obstruction on the path way from the embankment of Gat No. 77 and 78. Panchanama was drawn on 9.6.2021. The petitioner had given no objection for use of the road from the lands of the petitioner. However, it was later noticed that the land of the petitioner was sold to respondent No. 4 prior to

the panchanama and the petitioner also accepts that the land from which concession was given for access was sold to respondent No. 4 prior to 9.6.2021.

4. On the basis of submissions made when it was noticed that the land belongs to respondent No. 4, another panchanama was drawn on 1.9.2021 wherein it was noticed that 33 KV electric pole existed on the middle of the path. The land from which the petitioner has given concession for road is from the land of respondent No. 4 and on the same road, there is electric pole in the middle of the road.

5. Thus, the respondents sought panchanama of different/original road, path way as claimed in the application, which was in existence and which was on the embankment of Gat Nos. 77 and 78. When the panchanama was drawn on 1.9.2021 it was noticed that there was road in existence from the embankment of Gat Nos. 77 and 78. In view of the panchanama drawn on 1.9.2021, the Mamlatdar passed the order, directing the petitioner herein to remove the obstruction on the embankment of Gat Nos. 77 and 78 and to open up the existing road. The order passed by the Mamlatdar was challenged before the Sub Divisional Officer by the petitioner. After considering the record, the Sub Divisional Officer has dismissed the revision filed by the petitioner.

6. The learned counsel for the petitioner has challenged the order passed by the authorities below in the present writ petition. Contention of the petitioner is that there does not exist road on the embankment of the Gat Nos. 77 and 78. It is also contention of the petitioner that the Mamlatdar had not followed the procedure as contemplated under the Mamlatdars' Courts Act.

7. With regard to the contention of the petitioner that the Mamlatdar has not followed the procedure as contemplated under the Mamlatdars' Courts Act, no objection was raised before the Mamlatdar and the petitioner himself has suggested alternate road from the field which was sold by the petitioner to respondent No. 4.

8. The petitioner had also participated in the court proceedings and has not raised any objection for non compliance of the procedure by the Mamlatdar, rather the petitioner voluntarily gave access, but not from his own property, but from the property of respondent No. 4. In view of the above, the petitioner is now debarred from contending that the procedure before the Mamlatdar Court is not followed. Both the authorities have concluded that there exist path way on the embankment of Gat Nos. 77 and 78 and these findings are summary in nature and cannot be possibly interfered.

10. The orders passed by the authorities under the Mamlatdars' Courts Act are subject to any order passed by the civil court under section 22 of the Mamlatdars' Courts Act. In the event, the petitioner is aggrieved by the orders of the authorities under the Mamlatdars' Courts Act, the petitioner may take such appropriate proceedings before the Civil Court to assert his right on the suit land/path way.

11. In view of the discussion made above, the writ petition is disposed of with above observations.

[ARUN R. PEDNEKER J.]