

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7129 OF 2016

SMT. BHAURAMMA SHRIKANTH

VIJAPURE & ANR

....PETITIONERS

V/S

APPASO GURUPADAPPA

VIJAPURE & ORS

....RESPONDENTS

...

Mr. Prasad B. Kulkarni for the Petitioners.

Mr. Samir Kumbhakoni for Respondent No.1.

Mr. C.D. Mali, AGP for Respondent Nos.2 and 3-State.

Mr. Rahul Khot h/f Mr. Nagesh Chavan for Respondent No.4.

...

CORAM: SANDEEP V. MARNE, J.

DATE : SEPTEMBER 04, 2023.

P.C.:

1 By this Petition, Petitioners challenge order dated 22 March 2016 passed by the Sub-Divisional Officer, Solapur No. 2, by which the order passed by the Tahsildar under section 5(2) of the Mamlatdars' Courts Act, 1906 (**the Act**) on 26 November 2015 has been set aside.

2 The Petitioners had filed proceedings under section 5(2) of the Act before the Tahsildar complaining about the closure of road by the Respondents passing through their land bearing Gat No.64/1A and 64/AB and thereby obstructing the right of way to the Petitioners. The Tahsildar deputed the Circle Officer to conduct spot panchanama and relying upon the said panchanama conducted by the Circle Officer, the Tahsildar proceeded to pass order dated 26 November 2015 allowing the

application filed by the Petitioners and directing the Respondents not to cause any obstructions to the access to the Petitioners land.

3 Respondents preferred Revision Petition under the provisions of section 23(2) of the Act before the Sub Divisional Officer, Solapur, challenging the decision of the Tahsildar. The Sub Divisional Officer has proceeded to allow the revision application and had set aside the Tahsildar's order dated 26 November 2015. Petitioners have filed present Petition challenging the Sub Divisional Officer's order dated 22 March 2016.

4 I have heard Mr. Kulkarni, the learned Counsel appearing for Petitioners and Mr. Kumbhakoni, the learned Counsel appearing for Respondent No.1.

5 Perusal of the order passed by the Sub Divisional Officer would indicate that he has proceeded to set aside the Tahsildar's order on the ground that Petitioners had failed to include owner of Gat No.64/2 as party to the application and that therefore application suffered from vice of non-joinder of necessary parties. The other reason recorded by the Sub Divisional Officer for reversing the decision is Tahsildar's failure to conduct personal enquiry and getting the same done from the Circle Officer. Another ground on which the Sub Divisional Officer reversed the order of the Tahasildar is lack of clarity about existence of road from panchanama, since no map was produced before the Tahsildar showing existence of such a road.

6 Mr. Kumbhakoni, the learned Counsel appearing for Respondent No.1 has submitted that Petitioners' application filed before the Tahsildar was not as per the format required under the provisions of section 8 of the Act. In support of this contention he would rely on the judgments of this Court in ***Sudam Namdeo Madke vs. The State of Maharashtra & Ors.*** 2022 (2) ALL MR 136 and ***Gaurakshan Sansthan vs. State of Maharashtra & Ors.***, 2019 (4) Bom.C.R. 643. According to him, since the application filed by the Petitioners was not in the format of a plaint, the same ought to have been rejected by the Tahsildar.

7 However, perusal of the revision application filed by Respondents before the Sub Divisional Officer would indicate that this objection was not raised before the Sub Divisional Officer. Therefore, Respondents cannot be permitted to raise this objection directly before this Court. Also of the relevance is the fact that the Sub Divisional Officer has not reversed the order of Tahsildar on the ground that the application was not in the form of a plaint as required under the Act. Also section 8 of the Act would indicate that even informal petition can be treated as plaint.

8 The judgments of this Court in ***Sudam Namdeo Madke*** (supra) and ***Gaurakshan Sansthan*** (supra) cannot be cited in support of an absolute proposition, every application which does not meet the requirement of a format prescribed under the Act must be rejected by the Tahsildar. I therefore do not find any merit in the objection of Mr. Kumbhakoni. Faced with the situation that the objection of the application not being in

format was not raised by the Respondents before the Sub Divisional Officer in their revision application, Mr. Kumbhakoni would rely upon the judgment of this Court in ***Sudhir Yashwant Dhangade vs. Ankush Kashiram Bole & Ors.*** 2019 (1) ALL MR 825. In para 13 whereupon this Court held as under:

“13 The issue raised in the petition being a pure question of law, which is not dependent on the determination of any question of fact and can be allowed to be raised at any stage of the litigation. Hence, the fact that the petitioner had not raised this ground before the learned Additional Collector would not prevent him from raising the said ground in this Writ Petition.”

9 However, considering the provisions of section 8 of the Act where even informal petitions can be treated as plaint, I am of the view that the Mamlatdar could not have rejected the application filed by the Petitioners only on the ground that the same was not in the format. Therefore, reliance of Mr. Kumbhakoni on the judgment in ***Sudhir Yashwant Dhangade*** (supra) would not assist his case.

10. One of the main reasons why the Sub Divisional Officer has reversed the order of the Tahsildar is failure on the part of the Tahsildar to conduct enquiry and inspection personally and getting the same done through the Circle Officer. True it is that under the provisions of section 19 of the Act, it is Tahsildar, who can make a personal inspection of the property in dispute. The words used in sub-section 2 of section 19 of the Act “personal inspection”. However, in the present case, there was an allegation against the Respondents of violating interim order passed by

this Court on 24 October 2016. Therefore, the Petitioners filed Contempt Petition No.201 of 2017. This Court passed following order on 19 September 2018:

“1 Learned counsel for the petitioners submits that the respondent No. 1 is in contempt of the order dated 24th October 2016, by which, the petitioners were permitted to approach their field for cultivating Gat Nos.64/1A and 64/1B. He submits that on several occasions, the petitioners were required to make a complaint to the concerned Authorities including the police, for implementation of the said order dated 24th October 2016 and that they had also paid protection money on three occasions. He submits that despite the same, even today, the respondent No.1 is obstructing the petitioners from cultivating Gat Nos.64/1A and 64/1B and as such is in contempt of the order dated 24th October 2016.

2 Learned counsel for the respondent No.1 refutes the said submission. He submits that the respondent No.1 has not obstructed the petitioners from cultivating the land and as such has not breached the order dated 24th October 2016.

3 Considering the rival submissions, it would be necessary to call for a report from the Tahasildar, Tadwal, Taluka Akkalkot, District Solapur, with regard to the position as to whether the petitioners are being permitted to cultivate the land i.e. Gat Nos.64/1A and 64/1B or whether the respondent No.1 is obstructing the petitioners from cultivating the land, though permitted by this Court vide order dated 24th October 2016.

4 Learned AGP to communicate the said order to the Tahasildar forthwith, so as to comply the order and submit a report on the next date through A.G.P.

5 The affidavit filed by the respondent No.1 is not on record. Registry to place the said affidavit on record or seek an additional copy from the counsel for the respondent No.1, before the next date.

6 Stand over to 10th October 2018. The Writ Petition No.7129 of 2016 to be placed on Board along with the aforesaid contempt petition.

7 The ad-interim relief granted on 24th October 2016 in Writ Petition No.7129 of 2016, to continue till the next date.

8 All concerned to act on the authenticated copy of this order.”

11 In pursuance of order passed by this Court the Tahasildar has personally conducted the site inspection and has submitted a report dated 8 October 2018. The report reads thus:

"उपरोक्त संदर्भीय विषयास अनुसरून सादर करणेत येते की, मा. उच्च न्यायालय यांचे दिनांक १९/०९/२०१८ च्या आदेशानुसार तहसिलदार अक्कलकोट यांनी दोन्ही पार्टींना नोटीस काढून स्थळपाहणीसाठी दिनांक ०३/१०/२०१८ रोजी समक्ष जागेवर तहसिलदार अक्कलकोट यांनी भेट दिली असता त्याठिकाणी पुढील परिस्थिती दिसून आली. त्यामध्ये गट नं. ६३ व ६४ ची पाहणी केली असता नकाशामध्ये दाखविलेप्रमाणे गट नं.६३/१ व ६३/२ प्र तीवादी यांची गट असून गट नं. ६४/१अ व ६४/१ब हे वादी यांचे गट आहेत. अर्जदाराच्या मते ६३/१ व ६३/२ याच्या मध्यातून पूर्व-पश्चिम पूर्वापार वहिवाटीचा रस्ता होता. सद्य परिस्थितीत ट नं. ६३/१ व ६३/२ च्या मध्यापर्यंत नकाशात दाखविल्याप्रमाणे छोटीसी पायवाट वस्तीपर्यंत जाण्यासाठी दिसून येते. व त्याठिकाणी ५० फूट वस्तीची घरे दिसून येतात. त्या वस्तीनंतर मात्र आळगी शिव पर्यंत १० फूटी रस्ता दिसून येतो. त्याच्या दोन्ही बांधावर मोठमोठी झाडे आहेत. गट नं.६४/१अ व ६४/१ब या गटाना जाणेसाठी कोणताही रस्ता दिसून येत नाही, असे स्थळ पाहणीच्या दरम्यान दिसून आले. प्र तीवादी यांच्यामते गट नं. ६७ व ६३ च्या बांधावर १० फूटी रस्ता वादी यांना जाणेसाठी आहे. परंतु स्थळ पाहणी दरम्यान सदरचा रस्ता ६३/१ च्या बांधापर्यंतच दिसून आला. त्यानंतर ६३/२ मध्ये पिक लावलेले दिसून आले. त्यामुळे गट नं.६४/१अ व ६४/१ब यांच्या वहिवाटीच्या रस्त्याला प्र तीवादी यांनी वस्ती करून रस्त्यास आडथळा आणल्याचे पाहणीत दिसून आले आहे. सोबत स्थळ पाहणीचा तहसिलदार अक्कलकोट यांचेसमोर केलेला पंचनामा,

स्थळपाहणीचा नकाशा, दोन्ही पक्षकारांचे म्हणणे या सोबत सादर केले आहे.

वरील प्रमाणे वस्तुस्थिती असून सदर वस्तुस्थिती मा. न्यायालयांसमोर सादर करणेस विनंती आहे.”

12 Since the Tahsildar himself has conducted site inspection and submitted a report before this Court, the objection of non-conduct of personal inspection by Tahsildar no longer survives. So far as the issue of non-joinder of owner of land Gat No.64/2 is concerned, it is incomprehensible as to why the said owner is a necessary party before proceedings filed before the Tahsildar as Petitioners had not raised any objection against the said land owner about obstruction. It was Petitioners' case that the obstruction was created by Respondents. Therefore, in my view, the Sub Divisional Officer's findings about Petitioners' application suffering from non-joinder of necessary parties appear to be clearly erroneous.

13 This leaves the last submission of Mr. Kumbhakoni about existence of alternative road for access to the Petitioners. Thus, as per the report submitted by the Tahasildar, it is apparent that the claim raised by the Respondents about existence of alternate road stands belied as the Tahsildar has recorded a finding that the said alternate road is only till the boundary of Gat No.63/1. He has also recorded a finding that the Respondents have created an obstruction to the access road for the Petitioners. Mr. Kumbhakoni has placed on record a compilation to indicate that the Petitioners can use alternate road to access their land. In my view, in the light of the specific finding recorded by the Tahsildar

during the course of personal site inspection about the alternate road not leading to the land of the Petitioners, the contrary finding cannot be recorded based on some unofficial maps and drawings relied upon by Mr. Kumbhakoni.

14 It must also be noted that an interim order has been operational in the present case since 24 October 2016 on account of which the Petitioners have been permitted to use the road which was sought to be obstructed by the Respondents. It would otherwise be iniquitous at this stage to permit Respondents to obstruct the access road leading to Petitioners land. The proceedings under the Act are summary in nature under which the Tahsildar has been empowered to direct removal of obstruction. Parties can always claim their substantive rights in civil proceedings and findings recorded in proceedings before Tahsildar cannot come in the way of the Civil Court in deciding the issues of possession or easementary rights. Needless, therefore to say that the parties shall be at liberty to file Civil Suit to assert their own rights.

15 In that view of the matter, the order passed by the Sub Divisional Officer reversing the order of the Tahsildar cannot be sustained. The Writ Petition is accordingly allowed. The order dated 22 March 2016 passed by the Sub Divisional Officer is set aside and the order passed by the Tahsildar on 26 November 2015 is restored.

(SANDEEP V. MARNE, J.)