

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 347 OF 2020

- PETITIONERS :-** 1. Raghunath Kothiram Kalambe, Aged
(Original resp.) 56 years, Occu.: Agriculturist,
2. Sau. Kalpana Raghunath Kalambe,
Aged about 49 years, Occu.:
Housewife,
Both R/o. Mowad, Tah. Narkhed, Distt.
Nagpur.

...VERSUS...

- RESPONDENTS :-** 1. Hitendra Anandrao Bele, Aged 50
years, Occu.: Agriculturist,
2. Sau.Minakshi Hitendra Bele, Aged 44
years, Occu.: Housewife,
Both R-1 & 2 R/o Mowad, Tah.
Narkhed, Distt. Nagpur.
3. The Additional Commissioner, Nagpur
Division, Nagpur.
4. The Additional Collector, Nagpur,
Distt. Nagpur.
5. Sub-Divisional Officer, Katol, Tah.&
Dist. Nagpur.
6. Tahsildar, Tah.Narkhed, Dist. Nagpur.

Mr. A.A. Dhawas, counsel for the petitioners.
Mr.S.R.Chakravarti, counsel for respondent Nos.1 and 2.
Mr.K.L.Dharmadhikari, AGP for respondent Nos.3 to 6.

CORAM : ANIL S. KILOR, J.
DATED : 10.01.2023.

ORAL JUDGMENT

Heard learned counsel for the respective parties.

2. The order dated 10/10/2019, passed by respondent No.3-Additional Commissioner, Nagpur Division, Nagpur, dismissing the revision application and maintaining the order of respondent No.4-Additional Collector dated 27/07/2017, whereby respondent No.4-Additional Collector dismissed the appeal preferred by the petitioners challenging the order passed by respondent No.5-Sub-Divisional Officer dated 26/10/2015 and thereby setting aside the order dated 03/09/2013 and remanding the matter for fresh enquiry, is under challenge.

3. After going through the orders passed by respondent No.6-Tahsildar, respondent No.5-Sub-Divisional Officer, respondent No.4-Additional Collector and respondent No.6-Additional Commissioner, and further the documents filed along with the petition, it can be said that the application, which was filed by the complainants/respondent Nos.1 and 2 on 25/06/2013 for removal of obstruction, was not filed as per the provisions of the Mamlatdars' Courts Act, 1906 (hereinafter referred to as "Act of 1906"), more particularly as provided under section 7 thereof.

4. The learned counsel for the complainants/respondent Nos.1 and 2 is not disputing the said fact.

5. Under section 9 of the Act of 1906, powers are vested with the Tahsildar to examine the plaintiff upon oath and ascertain from him such of the particulars specified in section 7 as are not clearly and correctly stated in the plaint and shall reduce the examination to writing in the form of an endorsement on or annexure to the plaint which shall

thereupon be deemed to be part of the plaint, if the Tahsildar finds that the plaint does not contain the particulars specified in section 7 of the Act of 1906.

6. Further, section 12 of the Act of 1906 provides that where the plaintiff declines to make a statement on oath under section 9; or where the plaintiff is willing to make or has made statement on oath under section 9, but fails to furnish the particulars specified in section 7 within the time fixed under section 9 or where it appears upon the face of the plaint, that the property or use claimed is not one of the kind specified in section 5, or that the cause of action arose more than six months before the plaint was presented; or where the plaintiff declines to subscribe or verify the plaint as required by sections 10 and 11 of the Act of 1906, the Mamlatdar shall reject the plaint.

7. Thus, the provisions of sections 7 to 12 of the Act of 1906 show that section 7 is mandatory. In the light of the above referred provisions of the Act of 1906, admittedly, the application filed by the complainant/respondent Nos.1 and 2

was not in consonance with section 7 of the Act of 1906.

8. Furthermore, nothing has been pointed out by the learned counsel for the complainants/respondent Nos.1 and 2 that the Tahsildar had undertaken the exercise as stipulated under section 9 of the Act of 1906. On the contrary, from the order of the Tahsildar, it is evident that he has exercised jurisdiction under section 143 of the Maharashtra Land Revenue Code, 1966 and not under the provisions of the Act of 1906.

9. Therefore, I am of the opinion that it is relevant to refer to the provision of section 143 of the Maharashtra Land Revenue Code, which reads thus:

“143. Right of way over boundaries

(1) The Tahsildar may inquire into and decide claims by persons holding land in a survey number to a right of way over the boundaries of other survey numbers.

(2) In deciding such claims, the Tahsildar shall have regard to the needs of cultivators for reasonable access to their field.

(3) The Tahsildar's decision under this Section shall, subject to the provisions of sub-sections (4) and (5), be subject to appeal and revision in accordance with the provisions of this Code.

(4) Any person who is aggrieved by a decision of the Tahsildar under this Section may, within a period of one year from the date of such decision, institute a civil suit to have it set aside or modified.

(5) Where a civil suit has been instituted under sub-section (4) against the Tahsildar's decision, such decision shall not be subject to appeal or revision."

10. It is clear from the above referred provision that it relates to right of way and the Tahsildar can make an enquiry to decide such claim as regards the right of way/reasonable access to the field for cultivation.

11. Undisputedly, the prayer of the complainants/respondent Nos.1 and 2 was not for grant of right of way for cultivation, but it was about removal of obstruction, which covers under section 5 of the Act of 1906.

12. In the circumstances, in the absence of non-

compliance of mandatory provisions of section 7 of the Act of 1906, I am of the opinion that the matter needs to be remanded back to the Tahsildar, who shall consider the application of the respondent Nos.1 and 2/complainants dated 25/06/2013 as a plaint under section 7 of the Act of 1906 and he shall undertake the exercise as provided under section 9 thereof and thereupon proceed further to decide the suit. Accordingly, I pass the following order.

ORDER

- (1) The writ petition is partly allowed.
- (2) The order dated 10/10/2019, passed by the Additional Commissioner, order dated 27/07/2017, passed by the Additional Collector and the order dated 03/09/2013, passed by the Tahsildar are hereby quashed and set aside.
- (3) The order dated 26/10/2015, passed by the Sub-Divisional Officer is maintained and the matter is

remanded back to the Tahsildar, who shall consider the application dated 25/06/2013 as a suit under section 7 of the Act of 1906 and he shall further undertake the exercise as provided in section 9 of the Act of 1906 and if the suit is not rejected under section 12 of the Act of 1906, he may proceed with the suit and decide the same on or before 31/05/2023.

(3) The parties shall appear before the Tahsildar on 19/01/2023.

13. In view of the above, the writ petition is disposed of.
No order as to costs.

[ANIL S. KILOR, J.]