



IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT AURANGABAD

30 WRIT PETITION NO. 1848 OF 2023

RAMESH PRASAD BUDGE AND OTHERS  
VERSUS  
NAGNATH DATTU BUDGE AND ANOTHER

...

Advocate for the Petitioners : Mr. Kodale Vikas G.  
AGP for Respondents/State : Mr. S.M. Ganachari  
Advocate for Respondent Nos. 1 & 2 : Mr. Kalyane Madhav  
Nivruttee

...

CORAM : KISHORE C. SANT, J.

DATE : 16.10.2024.

PER COURT :

1. Hear the parties.
2. The petitioner challenges the order passed by the learned SDO, Nilanga dated 18.11.2022 in ROR/2022/KAVI/119, by which the Revision Application under Section 23 (e) of the Mamlatdar's Court Act came to be rejected. The petitioners are the original respondents in proceedings under Section 5 proceedings before the Tahsildar, Nilanga filed

by respondent Nos. 1 & 2.

3. The learned Tahsildar by considering the panchanama and after hearing the parties was pleased to allow the application of the respondent Nos. 1 & 2 directing the petitioners to remove an obstruction on the road and to allow the respondents to approach their land Gut No. 633 by said way. The said access passes to the land Gut No. 632 and 635.

4. The said finding was challenged by the petitioners by filing petition before the learned SDO. The learned SDO confirmed the order passed by the learned Tahsildar.

5. Learned Advocate for the petitioners submits that in the application the learned Tahsildar had not given sufficient opportunity as required under Section 5, 7, 8 and 9 of the Mamlatdar's Court Act. Even the date of cause of action is not mentioned in the application. The Mamlatdar did not offer sufficient opportunity to the petitioners. It is thus submitted that the entire judgment needs to be quashed and set aside. He relies upon the judgment reported in **Sudhir Yashwant**

**Dhangade Vs. Ankush Ksshiram Bole & Ors. - 2019 (1) ALL MR 825**, wherein, this court has held that if the witnesses are examined before the Mamlatdar's Court the other side has a right to cross examine such witnesses.

6. He further relied upon the the judgment passed by this Court in **Purushottam Umrao Chavan Vs. The State of Maharashtra and Others, Civil Revision Application No. 187 of 2009, decided on 16.11.2010**, wherein, this Court has held that for entertaining the application under Section 5, there has to be compliance of Section 7, 8 and 9 of the Mamlatdar's Court Act. If there is no such compliance Section 12 gives a power to the Mamlatdar to reject the petition or decline to make any order.

7. Learned advocate for respondent Nos. 1 & 2 supports the order. He submits that no such grounds were raised before the Mamlatdar. Before Mamlatdar even said is not raised and all grounds for the first time are raised in the revision. He further points out that the petitioner No. 1 had also filed a suit in the court the Joint Civil Judge, Junior Division, Nilanga bearing RCS No. 18 of 2017 seeking injunction against

respondents from using the said road. The said Court specifically recorded findings and dismissed the suit. He submits that once Civil Court records a finding it is not open for any party to reopen the same in any other proceedings. No case is made out for calling interference in the impugned judgment and order.

8. The learned AGP for the added respondents also supports the judgment.

9. Considering the submissions of the petitioner, this court finds that both the judgments relied upon by him are not applicable. In the present case that respondent has not examined any witness and therefore there is question of giving the petitioner an opportunity to cross-examine such witnesses. As a matter of fact, in the present case no witnesses are examined. So far as the directions in the case of **Purushottam Chavan** (supra) is concerned this court finds that in paragraph No. 6 of the order this Court observed that the plaint needs to be rejected under Section 12, in case the plaintiff declines to make statement on oath under Section 9. In the present case

no case is made out that Mamlatdar has directed the respondents to give statement on oath under Section 9. For these reasons the ratio is not applicable. It is submitted by the petitioner that against the judgment of the Civil Court the appellant has preferred an appeal and the same is pending. This court finds that it is of no use for the present.

10. As the said Court finds that any order passed in this proceedings would always be subject to outcome of any proceedings before the Civil Court. In the present case also if at all the petitioner succeeds in an appeal then the said judgment will prevail upon the judgment impugned in this petition.

11. In view of the this, this Court finds that there is no merit in the petition and the same is liable to be rejected, while exercising jurisdiction under Article 227 of the Constitution of India. For the reasons stated above the petition stands dismissed. No order as to the costs.

12. It is made clear that the judgment will subject to the outcome of the Civil Appeal, which is filed against the judgment

and order passed in RCS No. 18 of 2017.

**( KISHORE C. SANT )  
JUDGE**

mahajansb/