

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2707 OF 2024

Nandkumar s/o Balaji Damkondwar,
Age 65 years, Occ. Agri.,
R/o Sarsam (Bk),
Tq. Himayatnagar, Dist. Nanded.

..Petitioner

Versus

1. Tushar Ramesh Aaglave,
Age 30 years, Occ. Agri.,
R/o Sarsam (Bk), Tq. Himayatnagar,
Dist. Nanded.
2. The Sub Divisional Officer,
Hadgaon, Tq. Hadgaon,
Dist. Nanded.
3. Tahasildar,
Himayatnagar, Tq. Himayatnagar,
Dist. Nanded.
4. Nayab Tahasildar,
Himayatnagar, Tq. Himayatnagar,
Dist. Nanded.

..Respondents

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Advocate for the Petitioner : Mr. Sachin Deshmukh h/f Mr. A.P
Deshmukh
AGP for Respondent/State : Mr. P.D. Patil
Advocate for Respondent No.1 : Mr. S.S. Panale h/f Mr. S.C. Bhosle
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CORAM : S.G. MEHARE, J.

DATED : MARCH 12, 2024

ORAL JUDGMENT :-

1. Rule. Rule made returnable forthwith and heard finally
with the parties' consent.

2. The submission of the learned counsel for the petitioner is that a plain application has been considered as a suit under Section 5 of the Mamlatdar's Courts Act. He also pointed out that an application was filed under Section 143 of the Maharashtra Land Revenue Code (for short 'MLR Code') to give an alternate way to reach the field of respondent no.1. He would submit that none of the provisions of the Mamlatdar's Courts Act were followed. The Tahasildar has exceeded its jurisdiction under the Mamlatdar's Courts Act. The Sub-Divisional Officer also did not consider this fact. This Court has rendered a catena of judgments on the Mamlatdar's Courts Act and its procedure. He has placed on record those pronouncements. He would also submit that to exercise the powers under Section 5 of the Mamlatdar's Courts Act, the way must be in existence before initiating the action. Respondent No.1 admitted that the way available to his field was obstructed; on the other hand, he stated that there was no way to his field. Hence, he may be given the way to approach his field. Relying on the pronouncements of this Court, he would submit that the orders of the Tahasildar and the Sub-Divisional Officer are perverse; hence, liable to be quashed and set aside.

3. Per contra, learned counsel for the respondent would submit that since the revenue authorities were not paying heed to the request of the respondent for the way to approach his field, he has

filed another application under Section 143 of the MLR Code. The way was in existence. Due to lack of knowledge, respondent no.1 filed a different application because the use of his field was stopped. Even today, the harvested crops are lying in his field. Since there was no way, he could not take the harvested crops from his field to the market. He also argued that the strict rules of law do not apply to the proceedings before the quasi-judicial authorities. However, in such cases, the matters are remitted to the Tahasildar to correct the applications and decide the matter on merit. He would pray that till the matter is decided according to the law, a small relief may be granted to allow the respondent to take away or carry out the crops lying in his field.

4. Learned counsel for the petitioner would submit that if the Court allows respondent no.1 to take away the harvested crops lying in his field, respondent no.1 should not take it as a matter of evidence before the Tahasildar. It should be only an interregnum arrangement.

5. It is a matter of no dispute that the application which has been considered as a suit under Section 5 of the Mamlatdar's Court Act is in contravention of Sections 7 to 11 of the said Act. This Court has taken a consistent view. A plain application cannot be considered a plaint under Section 5 of the Mamlatdar's Courts Act. The order passed on such matters should be set aside, and the matter should be

remitted back to Tahasildar to decide it afresh by strictly following the provisions of the Mamlatdar's Courts Act. Herein the case also, the impugned orders are apparently without following the mandatory provisions of the Mamlatdar's Courts Act. Hence, the petition deserves to be allowed.

ORDER

- (i) The petition is allowed.
- (ii) The impugned order of the Tahasildar, Himayatnagar passed in Case No. 2023/Jamabandi/Shet Rasta/Pra.Kra. Dated 05.01.2023 and the order of the Sub-Divisional Officer, Hadgaon passed in Case No. 2024/Appeal/Revision/Sarsam/Himayatnagar/CR-01 dated 14/02/2024 are quashed and set aside.
- (iii) The matter is remitted to the Mamlatdar/Tahasildar for deciding it afresh by following the procedure strictly as contemplated under the provisions of the Mamlatdar's Courts Act by granting an opportunity to the respondents to amend the plaint as required under the said Act.
- (iv) Both parties shall appear before the Tahasildar, Himayatnagar, on 21.03.2023.
- (v) Respondent no.1 shall amend the plaint as required under the Mamlatdar's Courts Act and provide a copy thereof immediately to the petitioner.

(vi) After amending the application as per the above directions, the Mamdatdar/Tahasildar should decide the matter within 45 days by granting an opportunity to both sides to lead the evidence if they wish.

(vii) By way of interregnum arrangement, respondent no.1 should be allowed to use the way from Gut No.193 and 194 only to carry his harvested crops lying in his field for three days after giving intimation in writing to the petitioner.

(viii) While using that road, respondent no.1 shall ensure that the crops of the petitioner, if any, are not damaged.

(ix) It is made clear that whatever signs would be created by using the vehicle to carry the harvested crops from the disputed way should not be used as evidence to prove the case.

(x) Rule made absolute in the above terms.

(xi) The learned AGP to communicate this order to Tahasildar, Himayatnagar.

(S.G. MEHARE, J.)