

WRIT PETITION NO. 6148 OF 2023

Versus

- Advocate for the Petitioner : Mr. P. B. Shirsath
AGP for Respondents no.1,2 : Mr. V. S. Badakh
Advocate for Respondent no.3 : Mr. V. V. Tarde

Dated : August 28, 2024

1. The petitioner impugns the order dated 15.12.2022 passed by the Sub Divisional Officer, Shirdi in revision application No.383 of 2021 thereby confirming the judgment and order dated 8.2.2021 passed by the Tahsildar, Kopargaon in Rasta Case No.39 of 2019, thereby rejecting claim of the petitioner under section 5 of the Mamlatdar's Courts Act, 1906 (for short the said Act).

2. Mr. Shirsath, learned advocate appearing for the petitioner submit that petitioner holds land admeasuring 2H 40R within gat no.111/3 at village Ves, Tq. Kopargaon. Petitioner was using common bandh of gat no.111/3 and 110 which runs in East-West direction as a customary way to approach his field. However, respondent no.3 constructed water storage tank and created obstruction in use of the customary way. Petitioner therefore approached Mamlatdar under section 5 of the said Act seeking removal of obstruction made by respondent no.3. The Tahsildar, instead of visiting the spot himself, caused panchnama through private persons. The panchnama suggests that petitioner can have alternate way, although, it records existence of the water tank constructed by respondent no.3. The petitioner objected contents of the panchnama and also filed application to discard the same. Petitioner requested learned Mamlatdar to personally visit the spot and draw panchnama as per actual position on the spot. The petitioner has also filed affidavits of co-sharers from gat no.111 in support of his contentions that existing customary way has been blocked by Respondent no.3. According to Mr. Shirsath, the learned Mamlatdar totally failed to exercise his jurisdiction in judicious manner and passed erroneous order that has been confirmed by the Sub Divisional Officer without applying his mind.

3. Mr. V. V. Tarde, learned advocate appearing for respondent no.3 supports the impugned order contending that the existence of customary way as claimed by the petitioner

has not been established. The petitioner can approach the Civil Court and assert his rights, if any.

4. I have considered the submissions advanced by learned advocates appearing for the respective parties. It is apparent that the land gat no.111 situated at village Ves, Tq. Kopargaon is ancestral property of the petitioner. It was divided in four different parts, after death of Shankar Pandurang Kolhe. Petitioner is allotted the land gat no.111/3 whereas other parts of gat no.111 were allotted to his brothers. Gat no.111/4 was allotted to Ramchandra Shankar Kolhe. It was sold by him to Laxman Dada Shelar and later on come to the ownership of respondent no.3. Thereafter, he constructed water tank. According to the petitioner, such construction is made without permission from the competent authority and blocked the customary way.

5. It is trite that Mamlatdar has to follow the procedure contemplated under section 7 to 15 of the said Act while exercising the jurisdiction under section 5 of the Act. In the present case, in pursuance of the petitioner's application, the panchnama dated 4.1.2020 has been drawn, however, it is not discernible that the Mamlatdar himself conducted such inspection. There are signatures of five private persons as panchas. Petitioner has raised specific objection to said panchnama and requested the Mamlatdar to cause spot inspection in person, however, no heed has been paid to such request. The petitioner has also filed affidavits of Ramchandra Shankar Kolhe and Waman Shravan More in support of his

contentions regarding existence of customary way and obstruction caused therein. The impugned order passed by the Mamlatdar nowhere depicts that he personally caused inspection of the spot. The observations in impugned order have been employed based on the panchnama that was seriously objected by the petitioner. Further, impugned order nowhere refers to affidavits of land holders from the same gat number relied by Petitioner. The conclusion drawn by the Tahsildar is based on no evidence. The Mamlatdar simply observed that the petitioner can have alternate way subject to consent from residents of the eastern part of gat no.111, however, failed to record finding as regards to existence of the customary way or otherwise based on the appropriate inquiry, inspection and evidence. The judgment of Sub Divisional Officer passed in revision also erroneously records that Tahsildar caused personal inspection. Overall survey of the evidence on record depict that Mamlatdar has failed to exercise his jurisdiction in judicious manner. Therefore, this is a fit case to remit back the matter for fresh consideration. Hence, following order.

ORDER

- i. Writ Petition is partly allowed.
- ii. The impugned orders dated 15.12.2022 passed by the Sub Divisional Officer, Shirdi in Revision Application No.383 of 2021 and order dated 8.2.2021 passed by the Tahsildar, Kopargaon in Rasta Case No.39 of 2019 are hereby quashed and set aside.

- iii. The matter is remitted back to the Mamlatdar, who shall follow the procedure prescribed under section 7 to 15 of the Mamlatdar's Courts Act and after giving opportunity of hearing to all the concerned, decide petitioner's application afresh in accordance with law, within a period of four (4) months from the date of this order.
- iv. The petitioner and respondent no.3 shall appear before the Mamlatdar on 20th September, 2024.
- v. Writ Petition stands disposed off. No costs.

(S. G. CHAPALGAONKAR)
JUDGE

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