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76-WP-6919-2023

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

76 WRIT PETITION NO. 6919 OF 2023

Vikram Narayan Belge

VERSUS

The State Of Maharashtra Through Its District Collector And Others

WITH

CIVIL APPLICATION NO. 4833 OF 2024

IN WP/6919/2023

...

Mr. A. G. Ambetkar, Advocate for the Petitioner.

Mr. P. D. Patil, AGP for Respondent-State.

Mr. N. K. Chaudhary for Respondent No.4 and 10.

CORAM : KISHORE C. SANT, J.

DATE : 2nd DECEMBER 2024

PC :-

1. Heard the learned Counsel for the parties.
2. By consent of the parties, the petition is taken up for final disposal at the stage of admission.
3. The proceeding is arising out of Section 5 of the Mamlatdar's Court Act, 1906. The Respondent Nos.4 and 10 approached the learned Tahsildar, Pathardi under Section 5(2) of the Maharashtra Land Revenue Code, 1966.
4. It is their case that, they are the owners of the land Gut No.242 from village Walunj, Tq. Pathardi. The road is obstructed by the present petitioner,

who happened to be the owner of land Gut No.411. They therefore prayed for removal of obstructions on the said road. The Tahsildar visited the spot and conducted a panchnama on 30th December 2021. It was mentioned that, there is no road available to go to the land Gut No.242 from Gut No.238. The petitioners filed their reply denying the allegations. The ground is taken that there is no map annexed as required under Order 7 Rule 3 of the Code of Civil Procedure, 1908. They prayed for rejection of the application.

5. The learned Tahsildar on realizing that road is demanded from the boundary of land Gut No.411 and 239. He again drawn a panchnama on 7th April 2022 wherein it was observed that, there is a road i.e. footway (paywat) till Gut no.242 from land Gut No.411 and 239. The Tahsildar on the basis of this, passed an order dated 15th September 2022 in Rasta Case (Jamin Vahiwat Case) No.22/2021 and directed to give cartway to the respondents and directed the petitioners to remove the obstructions from the boundary between Gut No. 411 and 239.

6. The petitioners being aggrieved approached the learned Sub-Divisional Officer, Pathardi by filing Revision Application No.67 of 2023. The learned Sub-Division Officer on hearing all the parties, rejected the Revision Application by confirming the order passed by the learned Tahsildar by its

judgment and order dated 16th May 2023 and thus the petitioner is before this Court.

7. The learned Advocate for the petitioner strenuously argued that the application was not complying with the provisions of Section 7 (b) and (c). No specific date of obstruction was mentioned. In the application it was vaguely mentioned that the obstruction is made two months before filing an application. He further submits that the Tahsildar failed to appreciate this basic lacuna in the case of the respondents. The first panchnama was already drawn. There is no provision to draw second panchnama in the Act and still the Tahsildar drawn a panchnama for the second time. In the panchnama, there is a reference only of a footway and still in the order it is directed to give the way as a cartway. He also argued that the owners of the land Gut No.411 are not joined as a party. The suit was thus not maintainable for non-joinder of the parties. He relied on the judgments of this Court in the cases of *Shankar s/o Vishwanath Pathak Vs. The State of Maharashtra and Ors.* decided on 25th October 2021 in Writ Petition No.11236 of 2017 and *Indubai w/o Haribhau Ghule Vs. State of Maharashtra and Ors.* decided on 2nd September 2021 in Writ Petition No. 7145 of 2016.

8. As against this, Mr.Chaudhary, the learned Advocate for the respondent

Nos. 4 and 10 submitted that the petitioner had clearly mentioned that the obstruction was raised two months prior to the date of filing the petition. The procedure required under Section 9 and onwards is only when the Collector calls upon the applicant to give an affidavit and to produce an evidence. It is only on failure to do so, the plaint deserves to be rejected. He submits that so far as non-joinder of parties is concerned, that is not affect the case in hand as the obstruction was alleged only against the present petitioner and as a matter of facts, there is no obstruction from the owners of the land Gut No.411. He relied on the judgment of this Court in the case of *Pramod s/o. Ashokrao Jadhav and Anr. Vs. Kashinath Bhanudas Jadhav and Ors.* decided 7th July 2023 in Writ Petition No.5324 of 2023.

9. The learned Advocate for Respondent has also pointed out that the petitioner has suppressed the facts that the petitioner had filed a civil suit bearing RCS No.336 of 2022 and they had also prayed for injunction prohibiting the respondents from using the said way. In that, an application was moved under Exhibit-5. The learned Civil Judge Junior Division, Pathardi specifically rejected that application by an order dated 10th April 2023. Immediately on the next date i.e. on 11th April 2023, the petitioners withdrew the said suit. He thus submitted that, it is clear that the petitioners could not

proved their case even prima facie in the Civil Court and now they have given up that claim.

10. The learned AGP also opposes the petition. Affidavit is also by respondent No.1 to 3.

11. This Court has gone through the submissions in Writ Petition No.11236 of 2017. This Court in paragraph No. 11 has observed thus:

“11. ----- More importantly, the provisions of Section 7 onwards further demonstrate that even if an informal petition can be treated as a plaint, the Mamlatdar can call upon the plaintiff to subscribe and verify it in the open court. It also requires him to make such an endorsement on the plaint. More importantly, Section 12 speaks about the consequences of non-compliance of the earlier provisions of Section 7 to 11 and enables him to reject the plaint, if it is not within limitation or if the plaintiff fails to make the statement on oath or the dispute is not pertaining to the issues converted by Section 5.”

12. Thus it is seen that it is only upon the Mamlatdar calling upon the plaintiff to subscribe and verify the contents of the plaint, the plaintiff is required to file the same on record. In case of failure only the consequences under Section 12 are to follow.

13. In writ petition No. 7145 of 2016, this Court in paragraph No.14 has observed as under:

“14. Further, it is to be borne in mind that Section 5(2) lays down a limitation for filing a suit which has to be filed within six months of creation of the obstruction. The plaint filed by the respondents clearly omits to state the exact date or even any date by way of approximation as to when the

obstruction was created, even if it is assumed that it was so created. If that be so, the lower authorities ought to have considered this aspect as well. They are not supposed to step in and exercise the Jurisdiction unless the Suit was filed within the period of limitation prescribed. Needless to state that the question of limitation goes to the root of the Jurisdiction.”

14. In the present case, the applicants i.e. Respondent No.4 and 10 have given a period by approximation stating that before two months the obstruction is caused. So far as, the judgment in the case of *Pramod Jadhav* (supra) is concerned, in paragraph No.5, this Court has considered the aspect of compliance of Sections 8 and 9 of the Mamlatdar's Courts Act. It is held that even if it is taken that the Mamlatdar has not called for details from the applicant that should not take away right of the parties.

15. On taking overall view, this Court finds that, in the present case the learned Tahsildar and learned Sub-Division Officer have categorically recorded the findings that there was no way in existence. Such being findings of the fact, this Court need not go into the question of the facts unless those are shown to be perverse and without any record. The allegation that though in the panchnama, the road is shown as footway, still the Tahsildar has granted cartway. This Court finds that the direction to be given by the Tahsildar for removal of obstruction on the road and Tahsildar has done the same. The word used as cartway even when not specifically taken, will not change the

nature of the relief granted by the Tahsildar. The main purpose of the provision is to remove the obstruction caused, disturbance or obstruction created by a person and to remove such impediment. Even the conduct of the petitioners shows that though they had filed civil suit, they on their own withdrew the said suit. It is thus clear that they could not show any right even *prima facie* in the civil court. Even that would be sufficient for the purpose of allowing the application. This Court does find that even if the word cartway is used by the Tahsildar that would hardly affect the merits of the case. This Court thus finds that no case is made out calling for interference at the hands of this Court.

16. In view of the above, petition stands dismissed and disposed off.

17. Pending Civil Applications, if any, stand disposed off.

[KISHORE C. SANT, J.]

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