



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.7498 OF 2023

Yogesh S/o Nanasaheb Deokar,
Age : 45 years, Occu. Agril.,
R/o Pachlegaon,
Tq. Jintur, Dist. Parbhani.

... **Petitioner.**

Versus

1. The Sub-Divisional Officer,
Selu Region, Selu,
District Parbhani.
2. The Tahsildar, Jintur,
Tq. Jintur, District Parbhani.
3. Santosh S/o Rajeshwar More,
Age : Major, Occu. Agril.,
R/o Pachlegaon,
Tq. Jintur, Dist. Parbhani.
4. Pandhari S/o Manikrao More,
Age : Major, Occu. Agril.,
R/o Pachlegaon,
Tq. Jintur, Dist. Parbhani.
5. Rajeshwar S/o Yogiraj More,
Age : Major, Occu. Agril.,
R/o Pachlegaon,
Tq. Jintur, Dist. Parbhani.
6. Ramkrushna S/o Yashwantrao Itollikar,
Age : Major, Occu. Agril.,
R/o Jintur,
Tq. Jintur, Dist. Parbhani.
7. Bandu @ Pandurang Yashwantrao Itollikar,
Age : Major, Occu. Agril.,
R/o Jintur,
Tq. Jintur, Dist. Parbhani.

8. Ravi S/o Prakash Kadam,
Age : Major, Occu. Agril.,
R/o Jintur,
Tq. Jintur, Dist. Parbhani.
9. Prakash S/o Shahaji Kadam,
Age : Major, Occu. Agril.,
R/o Jintur,
Tq. Jintur, Dist. Parbhani.
10. Abhishek S/o Kamalkishor Jaiswal,
Age : Major, Occu. Agril.,
R/o Jintur,
Tq. Jintur, Dist. Parbhani.
11. Smt. Durga W/o Satishrao Kundikar,
Age : Major, Occu. Agril.,
R/o Pachlegaon,
Tq. Jintur, Dist. Parbhani.
12. Dipti Satishrao Hardas Kundikar,
Age : Major, Occu. Agril.,
R/o Pachlegaon,
Tq. Jintur, Dist. Parbhani.
13. Vijay S/o Ambadasrao Kulkarni Arvikar,
Age : Major, Occu. Agril.,
R/o Pachlegaon,
Tq. Jintur, Dist. Parbhani. ... Respondents.

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Advocate for the Petitioner : Mr. Deshmukh Vijay Vasantrao.

AGP for Respondent/s-State : Mrs. M. L. Sangit.

Advocate for Respondent Nos.3 to 5 : Mr. Deshmukh Ravindra
Madhavrao.

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CORAM : S. G. MEHARE, J.

DATE : 10.01.2024

ORAL JUDGMENT :-

1. Rule. Rule made returnable forthwith and heard finally
by consent of the parties.

2. The petitioner was the respondent in the proceeding initiated by the present respondents on an application dated 20.05.2021 addressed to the Tahsildar, Jintoor. It was a simple application complaining about the obstruction of the way to the field. However, the Tahsildar treated the said application as a plaint under the Mamlatdar's Courts Act, 1906. The Tahsildar passed the prohibitory order on 22.06.2022 against the present petitioner. Against the said order, revision was preferred before the Sub Divisional Officer, Selu. The Sub Divisional Officer, Selu by order dated 18.04.2023, dismissed the revision. Against the said order, the petitioner is before this Court.

3. The petitioner has raised the legal objection that Sections 7 to 11 of the Mamlatdar's Courts Act were not complied with. Hence, the Tahsildar had no jurisdiction to entertain the petition, as if it was a suit under the Mamlatdar's Courts Act. He says that the entire process is illegal and orders passed against the petitioner are against the law.

4. Per contra, learned counsel for the respondents would submit that the appropriate practice and procedure has been followed. The correct inquiry was made. An opportunity was

granted to the petitioner to cross-examine the witnesses. There is no legal defect in the impugned orders.

5. In reply, the learned counsel for the petitioner submits that Sub Section (3) of Section 5 of Mamlatdar's Courts Act provides for the cause of action. The cause of action shall be mentioned in such applications because such a suit cannot be entertained after six months from the date on which the cause of action arose. No cause of action was pleaded in the application. He also referred to Sections 7, 8, 9, 10, 11 and vehemently argued that the impugned orders are liable to be quashed and set aside.

6. To bolster his argument, he relied on the ***Taraba W/o Sopan Tathe Vs. Vandana w/o Gajanan Tikare and others; 2022 DGLS (Bom.) 3767*** and ***Sudam Namdeo Madke Vs. State of Maharashtra and other ; 2021 (6) AIR Bom. R 58.***

7. The application dated 20.05.2021 is not in compliance with the provisions of the Mamlatdar's Courts Act. Though it has been tried to argue that the opportunity to cross-examine the witness was granted, the application is not in the prescribed form as provided under Section 5 of the Mamlatdar's Courts Act. The procedures prescribed under

Sections 7, 9, 11 and 12 of the said Act have also not been followed while allowing the case of the respondents. Apparently, the application was not in conformity with the requirements of Section 7 of the Mamlatdar's Courts Act. The case laws mentioned above are squarely apply to the case at hand.

8. For the above reasons, the Writ Petition is allowed. The matter is remitted to the Mamlatdar to decide it afresh in the light of the observations made herein above by following the procedure strictly as contemplated under the provisions of Mamlatdar's Courts Act by granting an opportunity to the respondents to amend the plaint as required under the Mamlatdar's Courts Act.

9. Parties have to appear before the Tahsildar, Jintur on 25.01.2024.

10. If the crop of the respondents is standing in the field, they shall harvest it without using the bullock cart and causing damage to the crop and the field of the petitioner only for this season.

11. Pending civil application, if any, stands disposed of.

12. The rule is made absolute in the above terms.

(S. G. MEHARE, J.)

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vmk/-