

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11136 OF 2021

Anusaya Shivaji Fattepure And Others

VERSUS

Raosaheb Anandrao Ingale And Others

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Advocate for the Petitioner : Mr. Sujit A. Patil

AGP for Respondent/State : Mr. A.S. Shinde

Advocate for Respondent Nos.1 to 20 : Mr. Laxman H. Kawale h/f Mr.
D.J. Patil

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CORAM : S.G. MEHARE, J.

DATED : JANUARY 03, 2024

PER COURT :-

1. Heard learned counsel for the petitioners and learned counsel for the respondents.
2. The petitioners have impugned the order of the Naib Tahsildar, Omerga passed in case no.2021/Mah/Jama/Kavi-213 dated 22.03.2021 granting an injunction under Section 5 of the Mamlatdar's Court Act and the order of Sub-Divisional Officer, Omerga in case No.2021/ROR/CR-31 dated 22.07.2021.
3. The petitioners were the respondents to those petitions. The respondents had a case that the petitioners had closed the way to reach their field by digging the ditch. They had filed a petition under Section 5 of the Mamlatdar's Court Act. Holding an enquiry, the Mamlatdar passed the impugned order of injunction, and the Sub-Divisional Officer also confirmed the said order.

4. Learned counsel for the petitioners would submit that a simple application was filed before the Tahsildar, which was considered a plaint under Section 5 of the Mamlatdar's Court Act. However, the provisions of Sections 7, 8, 9, 10 and 11 of the said Act were not followed. Since it was not in a prescribed form, it could not be treated as a plaint under Section 7 of the Mamlatdar's Court Act. The compliance required under Section 7 was also not disclosed therein. It was simply an application signed by various people. The plaint was not subscribed, or verified, and the Mamlatdar did not endorse the plaint that it was duly subscribed and verified. He, relying on the two cases of this Court, prayed that since it was not the plaint and not in compliance with the above provisions of the Mamlatdar's Court Act, both orders were bad in law and liable to be set aside.

5. Learned counsel for the contesting respondents has vehemently argued that an opportunity was granted to the petitioners. They have contested the petition on merit. They never raised serious objections about format as required under Section 7 of the Mamlatdar's Court Act. Due to the Act of a single petitioner, many agriculturist have suffered a loss to use and enjoy their agricultural fields. For mere technicalities, the respondents may not be deprived of their right to use and enjoy their fields. He would submit that since there were no illegalities in material finding on the fact and exercising powers, the petition is liable to be dismissed.

6. Admittedly, the application dated 11.09.2020 filed before the Tahsildar claiming the relief by way of injunction against the petitioners was not in the form as provided under Section 7 of the Mamlatdar's Court Act, nor a plaint or petition presented that may be considered as a plaint. There is no endorsement that Mamlatdar has examined the plaintiff on oath as provided under Section 9 of the said Act. There is nothing to show that the Mamlatdar required the plaintiff to subscribe and verify the plaint in his presence in open Court, nor did the Mamlatdar endorse to that effect. The Mamlatdar's Court Act is a self-contained Act that confers the powers on the Mamlatdar to exercise the power of injunction. The said Act itself has prescribed a procedure for presenting the plaint. It requires contention, verification and endorsement of the Tahsildar. This has not been done. Exercising the powers restraining someone from doing and not doing something cannot be exercised mechanically. This Court, in the case of Tarabai w/o Sopan Tathe Vs. Vandana w/o Gajanan Tikare and others in Writ Petition No.3266 of 2022 dated 22.03.2022 and Purushottam Umrao Chavan Vs. The State of Maharashtra and others in Civil Revision Application No.187 of 2009, dated 16.11.2010, took a view that compliance with Sections 7 to 11 of the Mamlatdar's Court Act is essential. If the applications presented do not confer with those provisions, the Tahsildar cannot exercise the power under the Mamlatdar's Court Act. Similar is the fact before the

Court. There was no compliance with the above provisions at all. On this legal point, both orders impugned before this Court were legally defective and incorrect. Hence, the following order :

ORDER

- I) The petition is allowed.
- II) The order of Naib Tahsildar, Omerga passed in case no.2021/Mah/Jama/Kavi-213 dated 22.03.2021 and the order of Sub-Divisional Officer, Omerga in case No.2021/ROR/CR-31 dated 22.07.2021 stands set aside.
- III) No order as to costs.
- IV) The observations of this Court will not deprive the parties from seeking the remedy under the Mamlatdar's Court Act as required therein.

(S.G. MEHARE, J.)