



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

17 WRIT PETITION NO. 11828 OF 2016

MADHUKAR VITTHAL SHINDE

VERSUS

THE COLLECTOR AHMEDNAGAR AND OTHERS

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Advocate for the Petitioner : Mr. Gawali Amol K.

AGP for Respondents-State : Mr. A. S. Shinde.

Advocate for Respondent No.4 : Mr. Latange V. P.

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CORAM : S. G. MEHARE, J.

DATE : 25.04.2024

PER COURT :-

1. Heard the learned counsel for the petitioner, learned AGP and learned counsel for respondent No.4.

2. The contesting respondent No.4/original applicant has filed a plaint under Section 5 of the Mamlatdars' Courts Act before the Tahsildar for removing the obstruction in the road in existence. After presenting the plaint the presence of the non-applicants (present petitioner) was secured, and only on one day they were absent. Hence, the matter was closed for orders on 06.07.2015. Thereafter, the impugned order was passed on 23.07.2015. The present petitioner had impugned the order of the Tahsildar before the SDO. He has raised the objection that the cause of action for filing the suit did not happen within six

months from the date of the plaint. However, the SDO did not comment on the objection as to the cause of action. He has recorded the findings that it was the submission of the respondent that no way/road was available between Gut Nos.557 and 558. Consequently, the petitioner had to seek a new road under Section 143 of the Maharashtra Land Revenue Code instead of an application under Section 5(2) of the Mamlatdars' Courts Act. Though recorded such findings, the Sub Divisional Officer appears to have sympathetically maintained the order of the Tahsildar.

3. Learned counsel for the petitioner pointed out that before the so-called plaint was presented, the contesting respondent approached the various authorities, complaining about the obstructions of the road. Therefore, she has no right to file a plaint under the Mamlatdars Courts Act. The Tahsildar, without giving an opportunity to file written statement, hastily decided the case *ex-parte*.

4. Learned counsel for the petitioner submits that the Bombay High Court, in the case of ***Gaurakshan Sansthan Vs. State of Maharashtra and others ; 2019(6) Mh.L.J. 473*** has held that the provisions under Sections 7, 9, 10 and 12 of the Maharashtra Mamlatdars' Courts Act are mandatory and its

compliance to be done as stipulated by Section 7 of the said Act. The Mamlatdar can proceed with the adjudication on merits only when the plaint is found to be admissible. No such mandatory provisions were observed in that case. Therefore, a Court finally held that the impugned orders were not sustainable on the grounds that the necessary compliance with the provisions of Sections 7 and 9 of the said Act had not been done. However, the liberty was granted to the petitioner to file a fresh application on the same cause of action by complying with the provisions of Section 7 of the said Act. The argument revolves around the mandatory non-compliance of the Mamlatdar's Court Act, particularly the cause of action. Hence, in any way, the plaint is not tenable. He prayed that the writ petition would be allowed and the application dismissed.

5. Per contra, learned counsel Mr. Latange for contesting respondent No.4 has vehemently argued that the petitioner was a layman. She did not know the procedure of law. The Mamlatdar was to examine the plaint as provided under the Mamlatdars' Courts Act. Section 9 of the Mamlatdars' Courts Act empowers the Mamlatdar to call for the parties if any defect is found in the plaint, and the opportunity should be granted to such litigants. He means to say that examination of

the plaint is the duty of the Mamlatdar and has to grant the applicant/petitioner such time as may under all circumstances appear reasonable. The Mamlatdar was required to resort to the provisions of Section 9 of the Mamlatdars' Courts Act, examine the plaintiff/applicant on oath, and ascertain such particulars specified under Section 7. He also argued that the Bombay High Court, in the case of *Bhagwat Buasaheb Phunde Vs. Rama Srihari Ghule and others; 2022 (3) Mh.L.J. 464* has held that although scheme of the Act does not expressly provide that power under Section 12 of the M. C. Act should be exercised at particular stage only, the scheme of the Act implies that party can seek rejection to plaint before it is admitted under Section 14 of the M.C.Act or by raising objection in written statement as to admissibility of plaint to enable Mamlatdar to frame issue in terms of Section 19(1)(c)(3) of M. C. Act. It has also been observed that while it is true that ordinarily, preliminary objection as to maintainability of the plaint on the ground of absence of cause of action should be raised by the respondent as early as possible if the party raises objections after filing written statement, the preliminary objection cannot be ignored. In the said case, the objection as to the maintainability of the plaint and its consequent rejection was not sought, either before admitting the plaint or in the

written statement, the Court dismissed the petition of the objector/non-applicant.

6. He further relied on the case of *Hasmukhbhai Ishwarbhai Patel Vs. Deputy Collector of the Gujarat High Court ; LAWS (GJH)-2022-12-1858*. In this case, a similar issue was before the Court. The case of *Bhaskarbhai Laxmishankar Mehta Vs. Pravinbhai Mohanbhai Zalavadia ; 2011 (JX) Gujarat 1741* was referred to. In the said judgment in paragraph No.19, the Court observed that moreover, as already noted herein above, in the absence of the date on which the cause of action arose, the basic requirements of Sub Section (3) of Section 5 of the Act are not satisfied and as such, the Mamlatdar had no jurisdiction to entertain the suit under Section 5 of the Act. The Court expressed the opinion that in the absence of anything on record to indicate that Mamlatdar has not undertaken the necessary exercise under Sections 7 and 9 of the Act to ascertain the cause of action having satisfied himself the Mamlatdar embarked upon the proceeding, the findings of the SDO that the suit was not filed within six months of the cause of action was erroneous. Finally, the Court remitted the matter to the Tahsildar.

7. In the case at hand, Mamlatdar did not examine the plaint and did not undertake the necessary exercise under Sections 7 and 9 of the Mamlatdars' Courts Act. The opportunity of hearing was not granted to the petitioner to file the written statement. In fact, the SDO ought to have remitted the matter to the Tahsildar, granting both sides the opportunity to bring the suit within the four corners of the Mamlatdars' Courts Act. Various issues based on the facts are involved in the matter. Therefore, the conclusion would be to remit the case for fresh decision. Hence, the following order :

ORDER

- (i) The impugned judgments and orders of the Tahsildar and SDO stand quashed and set aside.
- (ii) The matter is remitted to the Tahsildar for deciding the case afresh by exercising the necessary provisions of the Mamlatdars' Courts Act and granting the petitioner an opportunity to file the written statement at the earliest and hearing to both sides.
- (iii) All the points are kept open for all parties concerned.

- (iv) All the parties should appear before the Tahsildar on 20.05.2024.
- (v) The Tahasildar should expedite the hearing.
- (vi) Writ petition stands disposed of

(S. G. MEHARE, J.)

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