



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8567 OF 2023

M/s. Buildbrick Builders and Developers & Anr.. ... Petitioners.

Versus

Abdul Hamid Khan Matwan and Ors. ... Respondents.

Mr. R.S. Datar i/by Ms.Druti Datar, Advocate for the Petitioners.
Mr. Sagar Joshi, Advocate for the Respondent No.1
Ms. Sushma Bhende, Advocate for the Respondent Nos.2 and 3.

CORAM : SHARMILA U. DESHMUKH, J.

DATE : JANUARY 17, 2024

P. C.:

1. By this petition the challenge is to the order dated 23rd June, 2023 passed by the Respondent No.2 allowing the Revision Application filed by the Respondent No.1 against the order of the Tahsildar rejecting the Application filed under Section 5 of the Mamlatdars' Courts Act, 1906.

2. The ownership of the properties is not in dispute. The Petitioners are owner of land bearing Survey No.65, Hissa No.3 and the Respondent No.1 is the owner of property bearing Survey No.75, Hissa No.2 and Survey No.76. The property of the

petitioners is adjacent to the property of the Respondent No.1. It is submitted that the Petitioners have been granted development rights and the development plans had also been sanctioned by the Thane Municipal Corporation.

3. On 5th August, 2021, the Respondent No.1 filed a one page Application before the Tahsildar stating that since last 100 years there is an access road passing through the land of the petitioners i.e. survey no.65/3 for the purpose of accessing his land. It was further stated that after the development rights have been assigned to the petitioners, their access road has been obstructed by constructing a tin-shed. The prayer was for restoration of the access road which was in existence by invoking Section 5 of the Mamlatdars' Courts Act.

4. The Circle Officer conducted an inspection and submitted a report on 6th September, 2021. The report after giving the boundaries of the Respondent No.1's land i.e. Survey No.75/2, states that the Respondent No.1 does not have any access road and the Petitioners are the owners of land bearing Survey No.65/3. The report further states that the Respondent No.1 has stated that for

the purpose of accessing his road previously there was 65.9 meters road and thereafter, as the tin-shed was erected, the Respondent No.1 is unable to access his land. The report further states that there is a civil proceeding in respect of the property of the Respondent No.1. The Tahsildar after considering the arguments of the parties rejected the Application by observing that as there is a civil dispute pending in the civil court, the dispute between the Applicant i.e. the Respondent No.1 and the Petitioner is civil in nature.

5. As against this, the Revision Application was filed before the District Collector by the Respondent No.1 which was resisted by the Petitioners-herein. Vide impugned order dated 23rd June, 2023, the District Collector set aside the order of the Tahsildar and directed the petitioners to remove the impediment on the access road at their own cost.

6. Heard Mr.Datar, learned counsel for the Petitioners, Mr.Joshi, learned counsel for the Respondent No.1 and Ms.Bhende, learned counsel for the Respondent Nos.2 and 3.

7. Mr. Datar, learned counsel for the Petitioners submits that

admittedly the land is situated within the municipal limits of Thane Municipal Corporation. He would submit that atleast his land has been declared non-agricultural land and development plans have been sanctioned by the Municipal Corporation. He submits that the provisions of the Mamlatdars' Courts Act was for the purpose of protecting the rights of the agriculturists and to provide for a summary procedure in case of any obstruction is created for access of the agricultural land by the agriculturists. He submits that upon plain reading of the provision of Sections 5 of the Mamlatdars' Courts Act, it is evident that the provision applies only in case of agricultural land and not to the lands which are situated within the limits of Municipal Corporation or in the cities. He relies upon the decisions in the case of *Vajechand Ramji Nandram Daluram*, reported in *1907 SCC OnLine Bom 33*.

8. He further assails the order of the District Collector for the reason that the sole ground for allowing the revision was the inspection report of the Circle Officer. He submits that the Circle Officer had merely noted the statement of the Respondent No.1 as regards prior access road of 65.9 meters without any finding

thereon by the Circle Officer and despite thereof the District Collector has held that there was an access road of 65.9 meters and has directed the petitioners to make the said access road available. He submits that the remedy of the Respondent No.1 is to approach the Civil Court and seek necessary relief and the provisions of the Mamlatdars' Courts Act are clearly inapplicable.

9. *Per contra*, Mr. Joshi, learned counsel for the Respondent No.1 would submit that his property i.e. survey No.75/2 has not been assessed as non-agricultural. He points out the survey map which is annexed at page 151 of the Petition and would submit that his property is landlocked and the only access is through the survey No.65/3, which obstruction is now caused by the petitioners. He submits that he has purchased the property in the year 2010 and there are proceedings pending in the Civil Courts as regards the ownership. He, however, submits that there has been no final adjudication of these proceedings and he is in the possession of the property. He submits that the Circle Officer has given a categorical finding that there is no other access road and as such, the District Collector has rightly allowed the Application.

10. Considered the submissions and perused the record.

11. Admittedly, the Application has been filed under the provisions of Section 5 of the Mamlatdars' Courts Act. The Mamlatdars' Courts Act, 1906, was enacted to consolidate and amend the law relating to the powers and procedure of the Mamlatdars' Courts. The provisions of Section 5 of the Mamlatdars' Courts Act, 1906, reads as under:

“5. (1) Every Mamlatdar shall preside over a Court, which shall be called a Mamlatdars’ Court, and which shall, subject to the provisions of sections 6 and 26, have power, within such territorial limits as may from time to time be fixed by the State Government,—

(a) to remove or cause to be removed any impediment, erected otherwise than under due authority of law, to the natural flow in a defined channel or otherwise of any surface water naturally rising in or falling on any land used for agriculture, grazing, trees or crops, on to any adjacent land, where such impediment causes or is likely to cause damage to the land used for such purpose or to any such grazing, trees or crops thereon;

(b) to give immediate possession of any lands or premises used for agriculture or grazing, or trees, or crops or fisheries, or to restore the use of water from any well, tank, canal or water-course, whether natural or artificial used for agricultural purposes to any person who has been dispossessed or deprived thereof otherwise than by due course of law, or who has become entitled to the possession or restoration thereof by reason of the determination of any

tenancy or other right of any other person, not being a person who has been a former owner or part-owner, within a period of twelve years before the institution of the suit of the property or use claimed, or who is the legal representative of such former owner or part-owner. Provided that, if in any case the Mamlatdar considers it inequitable or unduly harsh to remove or cause to be removed any such impediment or, to give possession of any such property or to restore any such use to a person who has become entitled thereto merely by reason of the determination of any such tenancy or other right, or if it appears to him that such case can be more suitably dealt with by a Civil Court, he may in his discretion refuse to exercise the power aforesaid, but shall record in writing his reasons for such refusal.

(2) Powre to issue injunction: The said Court shall also, subject to the same provisions, have power within the said limits, where any impediment referred to in sub-section (1) is erected, or an attempt has been made to erect it, or, when any person is otherwise than by due course of law disturbed or obstructed, or when an attempt has been made so to disturb or obstruct any person, in the possession of any lands or premises used for agriculture or grazing, or trees, or crops, or fisheries, or in the use of water from any well, tank, canal or water-course, whether natural or artificial used for agricultural purposes or in the use of roads or customary ways thereto, to issue an injunction to the person erecting or who has attempted to erect such impediment, or causing, or who has attempted to cause, such disturbance or obstruction, requiring him to refrain from erecting or attempting to erect any such impediment or, from causing or attempting to cause any further such disturbance or obstruction.

(3) No suit shall be entertained by a Mamlatdar's Court unless it is brought within six months from the date on which the cause of action arose.

(4) The cause of action shall be deemed to have arisen on the date on which the impediment to the natural flow of surface water or the dispossession, deprivation or determination, of tenancy or other right occurred, or which the impediment, disturbance or obstruction, or the attempted impediment or disturbance or obstruction, first commenced.

Explanation.—The exercise by a joint owner of any right which he has over the joint property is not a dispossession, or disturbance of possession of the other joint owner or owners within the meaning of this section.”

12. As far as Sub-Section (1) is concerned, Clauses (a) and (b) of Section (1) would indicate that the said section was applicable in cases where an application is made for removing any impediment likely to cause damage to the land or for restoration of possession of lands or premises used for agricultural purposes. As far as Sub-Section (2) is concerned, the Mamlatdar is empowered within the said limits to direct the removal of impediment in the possession of any lands or premises used for agricultural or grazing or trees or crops or fisheries or in the use of water from any well, tank, canal or water-course, used for agricultural purposes or “*use of roads or customary ways thereto*”.

13. A holistic reading of the provisions of Section 5 of the Mamlatdars' Courts Act would indicate that the power which was granted which is summary in nature was for the protection of the lands used for the purpose of agriculture and when any impediment is caused or any obstruction is raised without due authority of law to the use of the land or the access of the land. The provisions of Sub-Section (2) would also indicate that first part of the Section refers to the power when the attempt had been made to disturb or obstruct any person in possession of land used for agricultural purpose or for use of water for agricultural purpose. The words “*use of roads or customary ways thereto*” has to be read *ejusdem generis* with the first part of the sub-section (2) and would indicate that any obstruction construed therein would be to use of road or customary ways in respect of the lands used for agricultural purpose or use of water from any well for the purpose of agricultural properties.

14. In the instant case, even if the land of the Respondent No.1 is not converted into non-agricultural use, there is no material which is produced on record to demonstrate that there

was any crop cultivation on his property. As such, in my opinion, the provisions of Section 5 of the Mamlatdars' Courts Act was clearly inapplicable to the facts of the present case.

15. Mr. Datar, learned counsel for the Petitioners has rightly placed reliance on the decision in the case of *Vajechand Ramji Nandram Daluram* (supra), where it has held that the Mamlatdars' Court had no further jurisdiction with regard to houses in town or cities or, in other words, the door of the Mamlatdar's Court after that date was shut to all cases relating to such houses. It also needs to be noted that one page application has been made to the Mamlatdars' whereas the provisions of the Mamlatdars' Courts Act, from Section 7 onwards provide a proper procedure, which does not appear to have been followed in the present case.

16. Although the Tahsildar has rejected the Application only on the ground that there is civil dispute pending between the parties, the rejection can be supported on the discussion which is stated above, as regards the applicability of the provisions of Section 5 of the Mamlatdars' Courts Act.

17. The Revisional Authority after noting the facts of the case

has relied upon the report of the Circle Officer dated 6th September, 2021. The report of the Circle Officer is based on the visual inspection of the property and there is no material as regards the village maps or any other official record which would demonstrate that there was an access road through the property bearing survey No.65/3. The Circle Officer has noted the statement of the Respondent No.1 that there was a previous road admeasuring 65.9 meters and the same has been accepted as gospel truth by the Revisional Authority without considering that there is no official documentary material on record to demonstrate the same.

18. Even if it is accepted that the Respondent No.1's plot is landlocked plot the remedy under Section 5 of the Mamlatdars' Courts Act is not the appropriate remedy. The District Collector merely on the basis of the Circle Officer's report has accepted that there was an approach road admeasuring 65.9 meters which has been obstructed by the Petitioners and has directed the petitioners to remove the same. The findings which are not based on any official documentary record is clearly unsustainable is hereby

quashed and set aside. Resultantly, the Application of the Petitioners under Section 5 of the Mamlatdars' Courts Act dated 5th August, 2021 is hereby quashed and set aside.

19. Needless to clarify that the Respondent No.1 is at liberty to adopt all appropriate proceedings in the appropriate forum for seeking the necessary relief which is required to be decided independently and uninfluenced by the observations made herein.

20. Accordingly the Petition succeeds.

(Sharmila U. Deshmukh, J.)