

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.361 OF 2024

Shri.Dattatray Rajaram Bathe Petitioner

V/s.

State of Maharashtra, Thr. Its Secretary, Respondents
Revenue Department & Ors.

Mr.Drupad S. Patil a/w Mr.Deeraj Patil, for the Petitioner.
Mrs.Snehal S. Jadhav, AGP, for the Respondent Nos.1 to 3-State.
Mr.Niranjan Mogre, for the Respondent Nos.4 to 6c.

CORAM : R.M. JOSHI, J.

DATE : 5th AUGUST 2024

P.C:-

. By consent of both sides heard finally at the stage of admission.

2. The Petitioner is original Applicant in RTS Revision No.27 of 2021 wherein order dated 9th December 2020 was passed by the Tahsildar, Bhore in Application No. 2 of 2018 under Section-5 Mamlatdar Court Act, 1906, was assailed unsuccessfully. Since in the Revision Sub-Divisional Officer has confirmed order passed by the Tahsildar, this petition.

3. The Respondent Nos.4 to 6 are Applicants before the Tahsildar in proceedings under Section 5 of the Mamlatdar Court Act wherein it is specifically averred that there is way passing through the agricultural land (S.No.673) of the petitioner herein and the same has been obstructed, resulting into causing of loss to these Respondents.

4. This Application is opposed by the Petitioner by filing his say, wherein it is claimed that no any way exits going through Gut No.673. The Tahsildar conducted an inquiry, spot inspection was also done, so also statement of the Respondents as well as Petitioner were recorded. The Respondents in their statement claimed in accordance with the Application made before the Tahsildar. Whereas the Petitioner in his statement dated 14th November 2019 has accepted the fact that the obstruction was created in Gut No.673, by placing thorny branches. He however provides justification thereof. Tahsildar by order dated 10th November 2020 directed the Petitioner to remove the obstruction caused in way going through Gut No.673. Being aggrieved by this order Revision came to be

preferred before the Sub-Divisional Officer, Bhore in RTS Revision No.27 of 2021. This Authority rejected the contention of the Petitioner by passing order dated 9th August 2023.

5. The learned counsel for the Petitioner submits that the Tahsildar has committed error in allowing the Application and granting mandatory injunction for removal of obstruction in the matter in this regard of the provisions of Sections-5, 7 and 8 of the Mamlatdar Courts Act. It is his contention that all particulars as contemplated under Section 7 are not incorporated in the Application such as the width and length of the way etc. It is further argued that there is no verification of the plaint done by Tahsildar as contemplated under Section 8 of the Act.

6. Finally, it is his submission that there was no opportunity of cross-examination given to the Petitioner and hence relying upon the judgment of this Court in case of *Meenath Sitaram Jaygude & Ors. V/s. State of Maharashtra and Others*¹, he seeks remand of the case to Tahsildar. To support his submissions with regard to the compliance of the procedure as

¹ Order passed in Writ Petition No.521 of 2020 dated 27th January 2021.

contemplated by the Act as well as to treat the proceedings as a suit, reliance is placed on *Samrat Group, through its partner Mukesh Hansraj Patel V/s. Kondiba Namdev Takalkar & Anr.*² and *Shri. Jagdish S/o. Shriram Dhande V/s. Shri.Ramchandra Chinduji Dhande & Ors.*³

7. The learned counsel appearing for the contesting Respondents opposed the said submission. It is his submission that the Petitioner was duly represented by a lawyer before the Tahsildar and as such there is no substance in his contention that he was not given opportunity of cross-examination. He has referred to the judgment cited in the case of *Meenath Sitaram Jaygude (Supra)*, he submits that in the said proceeding party was not represented by the lawyer and hence order impugned therein was set aside with the direction of remand. By referring to the reply as well as the statement of the Petitioner himself it is contented that the order passed of removal of the obstruction cannot be faulted with.

8. There cannot be dispute with regard to the

2 Order passed in Writ Petition No.8719 of 2016 dated 24th January 2024.

3 Order passed in Writ Petition No.847 of 2019 dated 2nd December 2019.

preposition of the law sought to be canvassed by relying upon the judgments of this Court in case of *Samrat Group (Supra)* that the provisions of Sections-7 to 11 are required to be complied with by the Tahsildar while entertaining proceedings under Section 5 of the Act. At the same time it is necessary to take into consideration the fact that the proceedings before the Mamlatdar are initiated by the Agriculturist whose access to the land is obstructed. This litigation essentially comes from rural area. Hence, though Section 7 of the Act, prescribed for presentation of plaint with particulars mentioned therein. However, at the same time it is permissible for Tahsildar to take cognizance of a Petition which is not in form of plaint and it is not open to be treated as plaint. The whole scheme of the Act, shows that strict rules of procedure would not be applicable to the proceedings under Section 5 of Act. The whole intention of the legislature to prescribe procedure therein is to ensure that the person against whom the injunction is sought to be issued is given fair opportunity to defend his case.

9. Reverting back of the facts of the case there is no

dispute about the fact that an Application is filed specifically under Section-5 of the Mamlatdar Court Act. It is candidly stated therein that there is a way through the Gut No.673 and the same has been obstructed by Petitioner. Though it is sought to be argued on behalf of the Petitioner that the length and width of the road has not been given, this Court is unable to accept the said contention, for the reason that this is not a suit for removal of encroachment in order to precisely mention the measurements of the property. The Application is for removal of obstruction in the way and it was sufficient for the Applicant to make a statement with regard to the existence such a way going through the land of the Petitioner. Undisputedly record indicates that there is a village map indicating the existence of way in dotted lines, through land in question. The learned counsel for the Petitioner has sought to argue that after implementation of consolidation the scheme fresh maps were prepared of the land concerned wherein the way is not shown. Needless to state that the purpose of Consolidation Scheme is altogether different. Thus any maps drawn in Consolidation Scheme would not be relevant for

determination of any other issue. In no case village map showing existence of way, roads, wells etc., can be overridden by the map in Consolidation Scheme. This therefore would not help Petitioner in any manner to support his case.

10. Though it is now sought to be argued in this Petition that, there existed a way at a some point of time in the past but its use is discontinued thereafter, and hence it is not shown in subsequent record, Perusal of the reply filed by the Petitioner before the Tahsildar does not make whisper about the same. On the contrary, a specific contention is taken that there is no way through his land. Apart from this in his statement recorded before the Tahsildar also he does not state anything in this regard but accepts the obstruction caused. The question arose before the Tahsildar for determination is as to whether there is existence of way and the same has been obstructed and on the basis of material on record it must be held so. Once such evidence is there on record, Tahsildar is not required to examine any other witness or call upon the Applicant to give any further evidence.

11. As far as the right of Petitioner to cross-examine the

Applicant i.e. Applicant/Contesting Respondent herein is concerned, even in Revision no such plea was raised that for want of cross-examination of the Applicant any prejudice is caused to the Petitioner. Undeniably, he was represented by a lawyer before Tahsildar and hence there is no substance in the said objection. Apart from this, statement of Petitioner itself is sufficient to pass appropriate order and as such this is not a case of any prejudice being caused to the Petitioner.

12. The learned counsel for the Petitioner has sought to make a grievance that the order passed by the Tahsildar has been abused by the Respondents as in place of foot way, cart way is sought to be created. This court is not required to go into the said allegations as the Writ Petition is restricted only for the challenge the order passed by the Tahsildar which is confirmed by the Revisional Authority, of direction of removal of obstruction. Needless to say that, it is open for the Petitioner to adopt appropriate remedy as provided by law if he is aggrieved by any subsequent Acts of the Respondents.

13. In view of the above Petition stands dismissed.

14. All pending Interim/Civil Applications are disposed
of.

(R.M. JOSHI, J.)