

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6683 OF 2024.

Mohan Vitthal Kore And Ors

...Petitioners.

Versus

Dattatray Baburao Patil And Ors

...Respondents.

Mr. Chetan Patil i/by Mr. Mandar G Bagkar for the Petitioners.

Mr. P. G. Sawant AGP for the Respondent-State.

Mr. Anand Patil for the Respondent Nos. 1 to 5.

Coram : Sharmila U. Deshmukh, J.

Date : December 13, 2024.

P. C. :

1. The Petition takes exception to the order dated 22nd March 2024, passed by the Sub Divisional Officer in exercise of the powers under Section 23 of the Mamlatdars Courts Act, 1906 ("the Mamlatdars Act").

2. The facts of the case are that the Respondent Nos 1 to 5 filed an application under Section 5 of the Mamlatdars Act. The case of the Respondent nos 1 to 5 was that as per the Village Map there was 32 to 33 feet wide road in existence from Balikre Village to Balikre Lake passing through about 23 survey numbers, which was in use of all the villagers and there is no alternate road available and that the Petitioner No. 1 during the lockdown in the year 2020 has closed the road. It was contended that there is incorrect noting of Survey

Numbers of Revenue areas as per the Village Map and the areas in possession of the villagers as per the actual Survey numbers. The rectification was carried out in the new maps as per the order of the TILR and the map shows the pathway in existence from Survey No 93 i.e. corrected Survey No 66 onwards. It is therefore necessary to remove the obstruction and to get the boundaries between the road and survey numbers fixed. Prayer Clause (c) sought the relief that the 32 to 33 feet wide pathway road from Balikre Village to Balikre Lake should be measured by the Taluka Inspector of the Land Records and the boundaries be fixed and if it is found that there is any encroachment thereon, the encroachment to be removed and the road be restored to its original position. Prayer clause (b) sought the relief that after the measurement, if any impediment is found from the survey number of the Petitioner No 1, the same may be removed.

3. The spot inspection was conducted by the Tehsildar on 17th September, 2021 noting that the parties are agreeable to removal of the encroachment in the pathway as per the Map. Vide order dated 25th January, 2022, the Tehsildar allowed the Application directing the removal of the obstruction by the Petitioners within a period of 15 days which came to be challenged before the Respondent No. 25 being Revision Application No. 6 of 2022 which was partly allowed and the matter was remanded to the Respondent No. 24 for re-inquiry. Upon

remand, vide order dated 10th July 2023, the Tehsildar once again allowed the Application of Respondent Nos. 1 to 5 as against which Revision Application was preferred before the SDO which resulted in passing of the impugned order dated 22nd March 2024.

4. Heard Mr. Chetan Patil, learned Counsel appearing for the Petitioner, Mr. Sawant, AGP for the Respondent-State and Mr. Anand Patil, learned Counsel appearing for the Respondent Nos. 1 to 5.

5. Mr. Chetan Patil, has taken this Court through the prayers sought in the Application under Section 5 of the Mamlatdars Act and would submit that the relief which is sought is of restoration of the road by fixation of boundaries and removal of the encroachment, which relief is squarely covered by the provisions of Maharashtra Land Revenue Code (MLRC). He has taken this Court through the provisions of Section 134 to 138 of MLRC and would submit that provisions of Section 5 of the Mamlatdars Act are distinct and separate and cannot be invoked for seeking the relief of fixation of boundaries. He would further submit that the Panchanama of spot inspection would show that there was pathway and that both the Petitioners and Respondents are agreeable that the pathway should be kept open as shown in the Map. He submits that the Panchanama does not show any obstruction by the Petitioners. He would further submit that the matter was remanded by the Sub Divisional Officer in the first round of litigation

as the Tehsildar's order did not have any discussion as regards the Spot Inspection, the statements and the plans and the boundaries. He submits that despite thereof, there was no such finding by the Tehsildar even upon remand, though specific objection was taken before the SDO about the absence of any finding. He would further submit that the Tehsildar upon remand has noted that there is spot inspection without any discussion thereof. He would further point out the additional compilation of documents and would submit that by the impugned order the Sub Divisional Officer has held that as per the map of 1875 there is no correction which has been sought for by the Petitioners and according to the said map the road is shown in existence. He would submit that the photograph at page 8 and 9 of the additional compilation of documents is of road in question. He would further submit that what the Respondents are claiming is existence of road of 32-353 ft. vide which is not demonstrated from the map of 1875.

6. *Per contra*, Mr. Anand Patil, learned Counsel appearing for the Respondent Nos. 1 to 5 would submit that incorrect photographs are produced by the Petitioners and infact there is road and produced photographs to demonstrate that part of the road which has been encroached upon by the Petitioners and would submit that the relief sought was for removal of the impediment which is clearly covered by

the Section 5 of the Mamlatdars Act. He would also point out to the map of 1875 to demonstrate that the road was in existence and has been encroached upon by the Petitioners. He would further submit that the provisions of Section 135 of MLRC would apply in case of dispute regarding village which has not been surveyed and therefore the provisions do not apply in the present case.

7. I have considered the submissions and perused the record.

8. Section 5 of Mamlatdar's Court reads as under:

"5. Power of Mamlatdar's Courts.-

(1) Every Mamlatdar shall preside over a Court, which shall be called a Mamlatdar's 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) Power 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 then 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) Suit to be filed within six months.- *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) Cause of Action.- *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"*

9. Under Section 5(2), the Mamlatdar has the power to issue injunction in event any obstruction is caused in the use of roads or customary ways thereto. The relief sought by the Petitioner is direction to the TILR for measurement of the road and fixation of boundaries and if any encroachment is found, in that event to remove the encroachment and to open the road from the inception till the end as per the Map of 1875.

10. Prayer clause (b) is consequent to prayer clause (c) and therefore the principle relief sought is of measurement, fixation of boundaries and removal of encroachment. Section 5(2) of Mamlatdar's Act re-produced above makes it clear that the injunction can be granted to remove the obstruction caused in use of road or customary ways. The case of the Respondents in the application is that there was

inconsistency between the areas comprised in the survey numbers in actual possession of the villagers and revenue areas as per the map and that as per the orders of the TILR in place of the old survey numbers, the new corrected survey numbers are reflected in the map which shows existence of the road and copy of the map was annexed. In effect what the Respondents sought was restoration of the road in accordance with the rectified map after removal of encroachment. The relief was clearly outside the purview of Section 5 of Mamlatdars Act.

11. In contradiction the provisions of Section 134 to 136 contained in Chapter IX of MLRC Code deals with boundary and boundary marks. Section 134 deals with the determination of boundary of field, Section 135 deals with the disputes regarding boundaries between villages, survey numbers and sub-division or areas of any survey numbers or sub-division. Section 136 provides for demarcation of boundaries of survey number or sub-division.

12. The Respondents have not come with plea that the road which was in use since prior in time have been obstructed by the Petitioners and to remove the obstruction. The Respondents have come with specific prayer for measurements, fixation of boundaries and removal of encroachments, if any, based on the rectified map. The prayer was therefore for determination of boundaries and fell within the purview of MLRC. The submission of Mr. Anand Patil that Section

135 applies only in case of unsurveyed village is not demonstrable from the said provision.

13. Both the parties have disputed the photographs produced by each other. Apart from the above, the panchanama which was prepared in the earlier round of litigation would indicate that between the survey numbers there is a pathway which the Petitioners and the Respondents were both agreeable to be kept open. The panchnama does not state about the existence of 32-33 ft. wide road. Despite remand, the order of Tehsildar does not reflect any discussion on the panchnama. The SDO has held that as per the order of District Superintendent of Land Records, dated 10th March, 2016, the village map of 1898 is cancelled and map of 1875 accepted by the villagers is confirmed. It has further held that in event there is need for rectification, the same will be done and the Petitioners have not shown that they have got their land records rectified. By relying upon the Map of 1875, the SDO held that the road is seen in existence.

14. The SDO lost sight of the fact that the inquiry contemplated is whether there is any obstruction to the use of road or customary way by the Petitioners. The removal of encroachment was consequent to the relief sought for fixation of boundaries after carrying out measurements which could not have been granted under Section 5(2) of Mamlatdars Courts Act. The appropriate remedy lies

under MLRC for fixation of boundaries.

15. Mr. Chetan Patil is right in contending though in the earlier round of litigation the remand was with the specific direction as regards necessary discussion on the spot panchanama, the statements of the adjacent land owners and the plans and boundaries, the order of the Tehsildar does not reflect any discussion on the specious ground that there is spot panchanama. The objections though placed for consideration, SDO has chosen not to deal with the same.

16. The order of SDO dated 22nd March, 2024 holding that as per the village map of 1875, the road is in existence and the encroachment is required to be removed fails to notice that the requirement was to carry out measurements and fixation of boundaries and Revisional Authority or the Tehsildar were not exercising powers under Section 135 of the MLRC.

17. In light of the above discussion, the impugned order is clearly unsustainable and is hereby quashed and set aside. It is open for the Respondents to adopt appropriate remedy in law for carrying out measurements and fixation of boundaries as per the Map of 1875.

18. Petition is allowed in the above terms.

[Sharmila U. Deshmukh, J.]