



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

Writ Petition (WP) No. 1254 of 2019

Smt. Nandabai Shankar Pachare

Versus

The Sub-Divisional Officer, Wani, Dist. Yavatmal and others

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri Rohit Joshi, Advocate for the petitioner.

Shri Amit Madiwale, AGP for the respondent nos. 1 and 2.

Shri Amol Jaltare, Advocate for the respondent nos. 3 to 15.

CORAM : ANIL S. KILOR, J.

DATED : 7th MAY, 2024.

Heard.

2. The respondent nos. 3 to 15 approached to the Tehsildar, Wani under Section 5(2) of the Mamlatdars Courts Act, 1906 (in short hereinafter referred as 'Act, 1906') claiming directions to the petitioner to remove obstruction alleged to have created by the petitioner in the approach way of the respondent nos. 3 to 15.

3. During the pendency of the said proceedings some of the respondents/applicants had withdrawn their claims and thereafter the Tehsildar proceeded in the matter and passed the order dated 28th August, 2018, directing the petitioner to remove the alleged obstruction.

4. The petitioner feeling aggrieved of the said order approached to the Sub-Divisional Officer, Wani by filing a revision application which came to be dismissed vide order dated 31st December, 2018. Hence, this writ petition.

5. Shri Joshi, learned counsel for the petitioner points out from the application under Section 5 of the Act, 1906 filed before the Tehsildar, Wani that, in the said application nowhere the date on which the obstruction was created is mentioned by the respondents/applicants.

6. It is submitted that the limitation provided under the Act is six months. It is further submitted that in absence of such date and necessary details as required in light of provision Section 7 of the Act, 1906, the Tehsildar ought to have sought compliance of such requirement, which he has failed to ask for. He, submits that a vague statement is made that, some months before the obstruction was made which is not sufficient to show that the application was filed within prescribed time limit.

7. On the other hand, Shri Jaltare, learned counsel for the respondent Nos 3 to 15/applicants opposed the present petition and submits that since long the said approach way is in existence and it has been

obstructed by the petitioner. It is submitted that in the spot inspection report also evidence was found of having in existence of such approach way. He, therefore, submits that both the authorities have rightly held in favour of the respondents/applicants. Hence, he prays for dismissal of the present writ petition.

8. Shri Madiwale, learned Assistant Government Pleader reiterates the argument of Shri Jaltare, learned counsel for the respondent nos. 3 to 15.

9. On perusal of the record, it is evident that in the application filed under Section 5(2) of the Act, 1906, the respondent nos. 3 to 15/applicants have not mentioned the date or the month when the alleged obstruction was made by the petitioner. A vague statement came to be made i.e. some months before, the petitioner made an obstruction to the approach way of the respondent nos 3 to 15/applicants. This vague statement does not help to find out whether the application was filed within prescribed time limit. Even in the order of the Tehsildar, there is no date mentioned of creation of such obstruction.

10. In that view of the matter, Tehsildar ought to have asked for compliance under Section 7 of the Act, 1906 which is a mandatory compliance. However, it appears that the Tehsildar instead of asking for

compliance of Section 7 of Act, 1906 proceeded with the matter and decided the same finally. The Sub-Divisional Officer has also committed the similar mistake by not taking into consideration, the above referred factors.

11. In that view of the matter, I am of the opinion that if the matter is remanded back to the Tehsildar to decide the same afresh after seeking necessary compliance, the ends of justice would be subserved. Accordingly, I pass the following order.

- i. The writ petition is partly allowed;
- ii. The order dated 28th August, 2018 passed by the Tehsildar, Wani and dated 31st December, 2018 passed by the Sub-Divisional Officer, Wani are hereby quashed and set aside;
- iii. The matter is remanded back to the Tehsildar to decide the application afresh after seeking necessary compliance under Sections 7 to 10 of the Act, 1906 and after granting sufficient opportunity to both the parties. The application be decided expeditiously and in any case within two months from the date of appearance of the parties.
- iv. The parties shall appear before the Tehsildar Wani, on **16th May, 2024** at 11 am.

[ANIL S. KILOR, J.]