



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

WRIT PETITION NO.5645/2024

Madhav Ganpatrav Argulwar and anr. .Vs. Prabhakar Karnu Aatram and Ors.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. D. P. Mankar, Advocate for petitioners.

Mr. I. S. Charlewar, Advocate for respondent Nos. 1 to 4.

Mr. H. D. Futane, A.G.P. for respondent Nos. 5 and 6.

CORAM : ANIL L. PANSARE, J.

DATE : DECEMBER 5, 2024

The petitioner is aggrieved by the order dated 09.09.2024, passed by respondent No.6 – Sub Divisional Officer, Kelapur, District Yavatmal, thereby upsetting the finding and order dated 28.06.2024, passed by respondent No.5 – Tahsildar, Kelapur, District Yavatmal.

2. Having heard both sides and having gone through the material placed before me, it transpires that respondent Nos. 1 to 4 approached Mamlatdar for removal of impediment on the approach road to their field. A plain and simple application was filed by these respondents.

3. The Mamlatdar proceeded with the inquiry by permitting both the parties to file written notes of arguments. However, the Mamlatdar failed to proceed with the application in terms of Section 8 of the Mamlatdars' Courts Act, 1906, which provides that if the application is not in the form of plaint, the Mamlatdar shall explain to the person presenting the petition the nature of the reliefs afforded by the Act and shall inquire whether the petitioner desires to obtain the relief

thereby. It further provides that if the petitioner expresses the desire so to obtain relief, the Mamlatdar shall endorse this desire on the petition which shall be then deemed to be the plaint under Section 7 of the Act.

4. In such an eventuality, the Mamlatdar is required to proceed further in terms of Section 9 and to record details as required in the plaint by examining the petitioner – plaintiff on oath.

5. That apart, Section 5(3) of the Act provides that no suit shall be entertained by Mamlatdars' Courts unless it is brought within six months from the date of which cause of action arose. In the application filed by respondent Nos.1 to 4, the cause of action has been not pleaded and, therefore, it was further necessary for the Mamlatdar to ascertain aforesaid facts in terms of Sections 7 and 9 of the Act.

6. These vital provisions have been not considered by the Mamlatdar as well as the Sub Divisional Officer. On the top of it, the Sub Divisional Officer has set aside the final order passed by the Mamlatdar but has maintained the interim order passed by the Tahsildar. Such approach is impermissible. Both the authorities have committed serious error of law and, therefore, both the orders are unsustainable.

7. The writ petition is accordingly partly allowed. Order dated 09.09.2024 passed by Sub Divisional officer, Kelapur and order dated 28.06.2024 passed by Tahsildar, Kelapur in R.M.No.11/MCA-5/2023-24 are quashed and set aside.

Proceedings before the Mamlatdar are restored on its file for consideration afresh, in accordance with law and what has been stated in the body of the order.

Parties shall appear before the Mamlatdar on 13.12.2024.

No order as to costs.

(Anil L. Pansare, J.)

Kahale