



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

935 WRIT PETITION NO. 4410 OF 2024

1. Karbhari Shivram Mohite
Age : 66 years, Occ. - Agri.
2. Permeshwar Narayan Mohite
Age : 46 years, Occ. - Agri.

Both R/o Motighavan,
Tq. & Dist. Jalna.

... PETITIONERS

VERSUS

1. Namdeo Karbhari Mohite
Age : 43 years, Occ. - Agri.
2. Shrimant Karbhari Mohite
Age : 66 years, Occ. - Agri.
3. Omprakash Nandram Maniyar
Age : Major, Occ. - Agri.
4. Rajendra Dnyandeo Mohite
Age : Major, Occ. - Agri.

All R/o Motighavan,
Tq. & Dist. Jalna.

... RESPONDENTS

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- Mr. B. R. Kedar, Advocate for the Petitioners
 - Mr. S. S. Randive, Advocate for Respondent Nos. 1 & 2
 - Mr. A. R. Ingle, Advocate for Respondent No. 3
 - Mr. D. U. Manwatkar, Advocate for Respondent No. 4
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CORAM : ROHIT W. JOSHI, J.

DATE : JUNE 25, 2025

ORAL JUDGMENT:

1. The present petition is filed challenging order dated 15.03.2024 passed by the learned Sub-Divisional Officer, Jalna exercising revisional jurisdiction under Section 23(2) of the Mamlatdar's Courts Act, 1906 in proceeding no. 2023/ROR/CR-124, thereby allowing the Revision Application filed before him in order to assail order dated 27.07.2023 passed by the learned Nayab Tahsildar, Jalna in proceeding no. 2023-ROR/CR-34/2023, whereby application filed by respondent nos. 1 and 2 seeking right of way under Section 5 of the Mamlatdar's Courts Act through field boundary i.e. *Dhura/Bandh*, passing between land bearing Gat No. 169, which is owned by the present petitioners, and land bearing Gat No. 168 owned by respondent no. 4 came to be rejected. In order to complete narration of facts it must also be mentioned that a suit being Regular Civil Suit No. 488/2023 is filed by the present petitioners, seeking to restrain the defendants in the said suit, who are respondent nos. 1 & 2 herein, from disturbing possession of the plaintiff over the subject suit way and from using the said land as road. The learned Mamlatdar had rejected the application as stated above vide judgment and order dated 31.07.2023. While rejecting the application the learned Mamlatdar has recorded that the claim in the Mamlatdar suit was not very precise and was unintelligible and therefore, the same could not be allowed. Aggrieved by rejection of their

application, respondent nos. 1 & 2 filed a revision under Section 23(2) of the Mamlatdar's Courts Act, which was allowed vide order dated 15.03.2024. The learned revisional authority recorded that perusal of map does not indicate existence of the alternate road for respondent nos. 1 & 2 (original applicants) and that the spot inspection map dated 27.07.2023 *prima facie* indicated that the present petitioners (non applicants) had created obstruction on the said road. The learned revisional authority had also directed another spot inquiry, pursuant to which *panchnama* was drawn on 06.03.2024. The learned revisional authority has observed that perusal of the said map dated 06.03.2024 also does not indicate existence of any other road for respondent nos. 1 & 2. Based on such observations, the revision application came to be allowed vide order dated 15.03.2024. Mr. Kedar, the learned advocate for the petitioners contends that the order passed by the learned Mamlatdar is just & proper and the same did not warrant any interference at the hands of the revisional authority. He contends that revisional authority has not recorded any reason for interference with the order passed by the learned Mamlatdar. His contention is that the revisional authority has proceeded with the matter as if it is the first authority. He also contends that adjudication under provisions of the Mamlatdar's Courts Act is an adjudication of summary nature and that a substantive civil suit being Regular Civil Suit No. 488/2023 was already

filed in relation to the subject matter of the suit on 30.08.2023. His contention is that the learned revisional authority should not have proceeded with adjudication of the matter in view of filing of the said civil suit. The contention of Mr. Kedar is that right of way is in fact an easement and such easementary rights, which are essentially civil rights can only be adjudicated finally by a Civil Court of competent jurisdiction. He therefore, submits that petition should be allowed by quashing the order dated 15.03.2024 passed by the learned revisional authority.

2. Per contra, the learned advocate Mr. Randive appearing for respondent nos. 1 & 2 (original applicants) supports the order passed by the learned Sub-Divisional Officer. He contends that proceedings before a Mamlatdar are normally initiated by poor and gullible farmers, who are not well versed with matter of procedure and therefore, while dealing with an application under Section 5 of the Mamlatdar's Courts Act, it is bounden duty of Mamlatdar to ensure that technical defects, if any, are removed and the matter is adjudicated on merits. He contends that in the present case, the learned Mamlatdar completely ignored the scheme of the Act, particularly the obligation cast on him by Sections 7 to 12 of the Act, and proceeded to decide the matter on technical considerations, which is impermissible in law. The learned advocate has placed strong reliance on judgment of this Court in the matter of **Tejram and Others Vs. the learned Additional Commissioner (Writ Petition No. 6861**

of 2016) decided on 01.03.2023. Having heard the provisions of the Act and having a sympathetic consideration towards the litigants to normally invoke provisions of the Act, a learned Single Judge of this Court has issued following directions vide paragraph 25 of the judgment. The same are reproduced herein for ready reference.

“25. Therefore, at this juncture, I am of the opinion that, to avoid denial of justice in such matters on the ground of procedural defects, it would be appropriate to issue certain guidelines to be followed by the revenue authorities. These guidelines shall be applicable and to be followed in the proceeding filed under the MLR Code or Tenancy Act etc. So far as Mamlatdars' Courts Act is concerned, except the guidelines Nos.II and VI, other guidelines will be applicable to it. The guidelines are as under:

i) If prayers made in the petition/application indicate that proceedings would lie under more than one statute, it shall be pointed out and sufficient opportunity shall be given to rectify the defects by filing separate petitions under the relevant statutes for the respective prayers.

ii) In case, the petition/application is not in a proper form or does not contain the necessary particulars as required under the statute or not supported by necessary revenue record or documents, the same shall be ascertained from the petitioner/applicant and shall be got it rectified by giving sufficient opportunity.

iii) Where it is necessary that the petition is to be supported by the affidavit or verification and it is not supported by it, the authority shall get it rectified by informing the applicant of such requirement and by giving such opportunity.

iv) In case, the documents being public documents available online, the authority can access them, or otherwise call for the record as that will have to be looked into for dealing the application.

v) But, in any case, without giving sufficient opportunity to satisfy the procedural requirement under the statute, the

authority shall not deny justice by dismissing the petition on such technical ground.

vi) The fact of grant of such opportunity must be recorded in writing by the authority and it must be reflected from the record and proceeding of such matter.

vii) Dismissal in such cases only be justified on the ground of non removal of the procedural defects, even after due opportunity is given or where the non-compliance or violation is proved to be deliberate or mischievous."

3. Having heard the rival submissions in the considered opinion of this Court, the jurisdiction of Mamlatdar under the provisions is a summary inquiry. Substantive civil rights of parties, such as right of way are required to be decided by a Civil Court of competent jurisdiction. Right to way is one of the facets of a civil right of easement, which only a Civil Court can competently and conclusively determine. It is well settled by a catena of judgments of this Court that orders passed by authorities under the Mamlatdar's Courts Act are subservient to adjudication of a civil suit by a Civil Court. Mr. Kedar is right in placing reliance on judgment of this Court in the matter of ***Digambar Vitthal Kale And Others Vs. Vasant Kacharu Kale And Others (Second Appeal No. 111 of 2017)*** decided on 11.01.2022, where a learned Single Judge of this Court has succinctly carved out the distinction between the two jurisdictions. It will also be profitable to refer to judgment in the matter of ***Vasudev Pandharinath Raikar And Others Vs. Manoj Mohal Dalvi And Ors.***¹.

¹ 2018 (4) MhLJ 927
komal kamble

4. In the light of the judgments referred to above, I find substance in the contention raised by Mr. Kedar that when a substantive civil suit is filed for adjudication of easementary right of road, the appropriate course is to allow the Civil Court to adjudicate the same.

5. Perusal of order passed by the Sub-Divisional Officer demonstrates that he has referred to two spot inspection reports and, on the basis of the said spot inspection reports, he arrived at *prima facie* opinion that there was no other available approach road. Mr. Kedar states that the second spot inspection in the month of March 2014 was ordered while order of *status quo* was operating in the civil suit filed by him. However, the order of *status quo* was only for maintaining position with respect to the disputed road as it is. It does not mean that fact finding exercise could not have been undertaken by the authorities functioning under the Act, while the suit was pending and *status quo* was in operation. Although it is stated that the *status quo* was not operating while *panchnama* was drawn, the *status quo* order will not be an impediment insofar as exercise of preparation of *panchnama* is concerned.

6. Since a civil suit is pending for adjudication of the substantive claim, although at the behest of the non-applicants before

the Mamlatdar, it will be appropriate that this Court does not show any interference in exercise of its writ jurisdiction to interfere with the order passed by the Sub-Divisional Officer. Needless to mention that the parties will be at liberty to raise respective contentions before the learned Civil Court, which will decide the matter on its own merits in accordance with law. The petition is not entertained on merits in view of alternate remedy of civil suit, which is already availed by the petitioners.

7. It is informed that the application for temporary injunction is pending in the said civil suit. Although there is an order passed in favour of the respondent nos. 1 & 2, the execution and implementation of the said order is stayed by this Court vide order dated 06.05.2024. The said order is in operation till date. Likewise, the Civil Court has also passed an order of *status quo* at a given point of time and although it is disputed as to whether the said order of *status quo* is in operation or not, however, perusal of order of *status quo* filed by the petitioners indicates that *status quo* is ordered to operate till further orders. The learned Civil Court shall independently assess the binding efficacy of the revisional order passed by the Sub-Divisional Officer in favour of respondent nos. 1 & 2 while deciding the application for temporary injunction. Apart from this, the Civil Court shall also take into consideration the material on the basis of which the revision application is allowed by the Sub-Divisional

Officer, if the said material is placed on record by respondent nos. 1 & 2, in whose favour the said order is passed. Needless to mention that this material will be considered and appreciated with other material on record. Since the disputed road is claimed through *Dhura/Bandh*, the entries under Section 165 of the Maharashtra Land Revenue Code will also be relevant.

8. Till the application at '**Exhibit 5**' is decided, having regard to the order passed by the revisional authority it will be appropriate in the interest of justice to allow the respondent nos. 1 & 2 to use the disputed road as of footway and not as a cart way. This arrangement will operate only till adjudication of the application at '**Exhibit 5**'. The application for grant of temporary injunction at '**Exhibit 5**' will be decided on its own merits in accordance with law. It is needless to mention that respondent nos. 1 & 2 will not walk through agricultural field of the petitioners but only through boundary between Gat No. 169 (land owned by petitioners) and Gat No. 168 (land owned by respondent no. 4). Respondent No. 4 does not have any objection for allowing use of field boundary as road.

9. The petition is **disposed of** in the light of observations made above and having regard to the fact that petitioners have already filed a

civil suit with respect to subject matter of the proceedings before the Mamlatdar. The suit will be decided on its own merits in accordance with law. The order impugned will be subject to further order/decreed to be passed in the said civil suit.

10. The civil application, if any, stands **disposed of**.

[ROHIT W. JOSHI]
JUDGE