



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

975 WRIT PETITION NO. 6827 OF 2024

NAMDEO MANIKRAO DIVTE AND ANOTHER
VERSUS
BHAUSAHEB BHAGAJI DIWTE AND OTHERS

Mr. K. A. Ingle, Advocate for the Petitioners
Mr. S. N. Kendre, AGP for the Respondent/State
Mr. S. N. Dudhate Advocate for Respondent No.1.

CORAM : R. M. JOSHI, J.

DATE : 9th SEPTEMBER, 2025

P.C. :-

1. By consent of both sides, heard finally at the stage of admission.
2. This Petition takes exception to the order passed by Tahasildar under Section 5 of the Mamlatdar's Courts Act (for short 'the Act') and dismissal of the Revision by Sub-Divisional Officer, Sillod, Dist. Chhatrapati Sambhajnagar against the said order.
3. The facts as they appear from the record indicate that the Petitioners claim themselves to be the owner and possessors of the agricultural land bearing Gut No.164, situated at Pimpalgaon Peth, Tq. Sillod, Dist. Chhatrapati Sambhajnagar. Respondent No.1 is owner and occupier of land bearing Gut No. 162. On 15/07/2021, Respondent No.1 moved an Application before Tahasildar for removal of alleged

obstruction towards the northern side of Gut No. 164. This Application came to be allowed by order dated 09/02/2022. The Revision filed by the Petitioners against the said order came to be allowed with direction of remand of the proceedings to Tahasildar for fresh inquiry. Tahasildar conducted fresh inquiry and by order dated 08/02/2024 allowed the Application. The exception taken to this order by the Petitioners was unsuccessful before Sub-Divisional Officer. Hence, this Petition.

4. Learned Counsel for the Petitioners submits that the original Application filed under Section 7 of the Act is not in accordance with the prescribed form nor it contains the necessary information as required by the said provision. It is his submission that the age, religion and caste of the party is not mentioned in the title of the said Application. It is his further submission that the Application is not supported by verification as contemplated by Section 10 of the Act. He also makes grievance with regard to no endorsement being made by Mamlatdar on the plaint filed by the Respondent. To support his submission that the provisions of Section 7 of the Act are mandatory in nature, the judgment of Co-ordinate Bench of this Court in case of ***Gaurakshan Sansthan, Murtizapur Vs. State of Maharashtra and Ors***¹ came to be relied upon. It is his further submission that even on the perusal of the inspection panchnama, it cannot be said that there is obstruction caused by the

¹ 2019(3) ALL MR 849

Petitioners to the customary way. Alternatively it is argued that the Respondent has alternate way available and as such no order ought to have been passed by the authorities.

5. Learned Counsel for the contesting Respondent supported the impugned order.

6. In order to appreciate the submission sought to be made on behalf of the learned Counsel for the Petitioners, this Court is required to take into consideration the purpose and object of the enactment. Section 5 of the Act is aimed at providing effective and urgent remedy to an agriculturist whose customary way has been obstructed illegally by another person. Needless to say that in so far the proceedings under Section 5 of the Act, existence of alternate way, even if any, has no relevance. The Tahasildar is required to take into consideration as to whether there exists a customary way and the same has been obstructed illegally.

7. Perusal of Section 7 of the Act indicates that the suit shall be commenced by the plaint which shall contend the particulars has mentioned therein. Having regard to the summary nature of proceeding, substantial compliance of this provision can be accepted when there are particulars required for determination of the proceedings are given. Herein this case the Respondent has specifically

stated about he being owner of Gut No. 164 and obstruction has been caused to the customary way for going through from Gut No. 162. There is further specific statement that such obstruction has been caused on 13/07/2021. This Application has been admittedly filed within a period of six months from the alleged obstruction caused. Thus, perusal of the Application clearly indicates that all necessary particulars as required for the purpose of deciding the said Application are present therein.

8. The intention of the legislature can be gathered from the provision of Section 8 of the Act which mandates even informal Petitions to be treated as plaints. In this context of this provision, Sections 9, 10 and 11 follow. In such case where informal Petitions are made and to treat them as plaints, the endorsement, verification etc., would be necessary. These aspects assume importance in view of the the intent of the legislature in enacting the provisions of the Act.

9. As far as the judgment in case case of ***Gaurakshan Sansthan, Murtizapur Vs. State of Maharashtra and Ors*** (supra) is concerned, it only says that the mandatory nature of compliance as stipulated by Section 7 of the Act is necessary. Herein this case, all necessary particulars as required for determination of the Application are very well present therein. Thus, it cannot be said that on account of form or non furnishing other information, any prejudice is being caused

to other side.

10. On merit it is sought to be argued that the spot panchnama drawn does not indicate any obstruction being caused. A perusal of the panchnama, however, clearly shows that the obstruction has been caused at the beginning of the Gut NO. 164. Thus, the grievance made by the Respondent is substantiated by material evidence on record and has been rightly taken into consideration by Tahasildar.

11. The provisions of the Act indicate that any order passed by the Tahasildar does not decide the rights of the parties and it is open for them to get their rights adjudicated upon from Civil Court. Thus, it is always open for the Petitioners herein to substantiate their case by seeking adjudication of their rights from the Civil Court. Suffice it to say that prima facie the order passed by Tahasildar is inconsistent with the material on record and once it is held that there is a customary way and the same has been obstructed, Tahasildar had no other option but to direct removal thereof.

12. Hence, Petition stands dismissed.

(R. M. JOSHI, J.)

ssp