



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7608 OF 2020

Vishnu Narayan Pawar
VERSUS
The State Of Maharashtra And Others

- Mr. S. R. Deshpande, Advocate for the Petitioner
- Mr. S. N. Kendre, AGP for the Respondent Nos. 1 to 3/State
- Mr. G. J. Pahilwan, Advocate for the Respondent No. 4

CORAM : R. M. JOSHI, J
DATE : OCTOBER 01, 2025

PER COURT :

1. By consent of both sides, heard finally at the stage of admission.

2. This Petition takes exception to the order dated 21.01.2020 passed by Tahsildar under Section 5 of the Mamlatdar's Courts Act, 1906 (for short '**the Act**') and confirmation of the said order in Revision by the Sub-Divisional Officer by order dated 16.09.2020.

3. There is no dispute about the fact that the contesting Respondent filed proceedings under Section 5 of the Act seeking removal of obstruction of way caused by the Petitioner and others. It is the case of the

contesting Respondent that he has purchased the said property from erstwhile owner and that he was using nala as a way to approach his land. It was further claimed that the Petitioner and others, who are adjoining land owners obstructed the use of the said nala as a way and therefore, proceedings came to be filed for seeking removal of the obstructions.

4. There is no dispute about the fact that Petitioner caused appearance before the Tahsildar and filed reply on 30.07.2019. In the said reply, it is claimed that there is no way, however, nala was used as a way and that being a neighbor, Petitioner has not objected for use of the same. It is claimed that there is alternate way available for the Respondent and the demand made by the Respondent of the removal of obstructions is not proper. A spot inspection was done on 27.11.2019 in presence of the Petitioner, contesting Respondent and panch witnesses. The Tahsildar passed order dated 21.01.2020 recording statements of the Petitioner herein with regard to the existence of the road and that his objection for using the said road unless 3R land, which has gone to the contesting

Respondent, is returned. Being aggrieved by the said order, Revision came to be filed before SDO unsuccessfully. Hence, this Petition.

5. At the outset, learned Counsel for the Petitioner raised objection with regard to the maintainability of the proceedings before Tahsildar. It is his submission that the mandatory requirements of Section 7 (a) to (f) of the Act are not complied with and therefore, the proceedings ought to have been rejected by the Tahsildar. It is his submission that Sections 8 to 10 of the Act were also expected to have been complied with by the Tahsildar and since there is no examination of Plaintiff on oath nor the plaint is subscribed and verified, the order passed on such proceedings/plaint cannot sustain. To support his submissions, he placed reliance on the judgment of Coordinate Bench of this Court in case of Gaurakshan Sansthan, Murtizapur vs. State of Maharashtra and Others, 2019(6) Mh.L.J. 473, Bhimrao Namdeo Dole vs. The Sub-Divisional Officer, Darwaha and Others, Writ Petition No. 702/2017, Bhagwat Namdeo Nirmal and Another vs. Sub-Divisional Officer and Others, Writ

Petition No. 10346/2012 & Baburao Maruti Sawant vs. Hanumant Yada Naik and Others, Writ Petition No. 2086/2013.

6. On merit, it is his submission that Tahsildar has committed an error in not considering the pleadings in the application to the effect that the contesting Respondent is not sure about the existence of the way and claims the way through nala. It is his submission that the 7/12 extract does not indicate existence of such road so also village map also not indicating existence of road. An objection also sought to be raised with regard to *locus standi* of the contesting Respondent in filing applications by referring to the sale deed in respect of Gut No. 195 so also 7/12 extract. On these amongst other contentions, impugned orders are sought to be set aside. It is further argued that if this Court finds that the Tahsildar ought to have been complied with Section 8 to 10 of the Act at least the proceedings are relegated back to Tahsildar for decision afresh.

7. Learned Counsels for Respondent supported the impugned orders.

8. At the outset, this Court would like to deal with the objection raised about the maintainability of the proceedings before Tahsildar on the ground of non-compliance of Section 7 of the Act. It is necessary to take note of the fact that the proceedings under Section 5 of the Act are summary in nature and no a suit filed before Civil Court. It is also necessary to take into consideration the purpose of the said enactment. The said enactment aims at granting urgent relief to the agriculturist whose right of way is obstructed in this regard, which results in non cultivation of land effectively. Thus, while deciding the proceeding under the Act, strict rules of pleadings as applicable in a suit before Civil Court cannot be applied. However, it must be seen as to whether the pleadings required for determination of issue and sufficient to enable the opposite side to respond to it, and same would be treated as substantial compliance of required pleadings.

9. In this context, if the application filed before Tahsildar in the present case is perused, it records the existence of way so also the names of the

adjoining owners who caused obstruction to the use of the said way. There is specific plea in the application that prior to 15 days of the filing of the application, such obstruction is caused. The reliefs to be pleaded in the plaint would be the nature and situation of the impediments erected and the situation of the lands which are adjacent to each other and nature of relief sought. Further more, what is necessary is to disclose the circumstances out of which the cause of action arose. As noted herein above, the application clearly indicates sufficient compliance of Section 7 of the Act. In considered view of this Court, if the yardsticks applicable to the pleadings in a civil suit are applied to the proceedings/plaint under Section 5 of the Act, the whole purpose of the Act would get frustrated.

10. As far as judgment in case of Gaurakshan Sansthan, Murtizapur (supra) is concerned, it is pertinent to note that the said case a specific objection was raised before Tahsildar with regard to non compliance of Section 7 and the same was not considered by the Tahsildar therein. From the said

judgment, it does not appear as to the nature of pleadings taken before Tahsildar therein in order to apply said judgment to the facts of the present case.

11. In so far as judgment in case of Bhimrao Namdeo Dole (supra), perusal of the said judgment indicates that in the application cause of action was not stated, which has led this Court to hold that there is non-compliance of Section 7 of the Act.

12. In case of Bhagwat Namdeo Nirmal and Anr (supra), the same issue was involved as the Tashildar has come to the conclusion that no cause of action has been stated in the application. In paragraph 6 of the said judgment it is held by this Court that even if cause of action was not detailed in the plaint, there was a duty cast upon the Tahsildar to given an opportunity to the Applicant to correct the said defect and also to examine Applicant on oath. The said observations are in the light of the fact that in the said case cause of action is not speltout.

13. Similarly, in case of Baburao Maruti Sawant (supra), the issue before this Court was with regard to

creation of cart-way, which was absolutely beyond jurisdiction of the Tahsildar to direct so. Having regard to the difference of facts in this case, said judgment has no application to the present case.

14. Coming back to the merits of the case, at the outset, it needs to be recorded that Petitioner had filed response to the plaint filed by the contesting Respondent. The response clearly indicates that the contents in the plaint were sufficient to indicate the cause of action so also the nature of impediment claimed by the contesting Respondent herein. Had it been not so, it was not possible that the Petitioner would have submitted a detailed reply. Apart from this, it is pertinent to note that the Petitioner has never raised objection with regard to non-compliance of Section 7 of the Act before Tahsildar. In case, such objection was raised and found to be acceptable, the Act casts obligation upon the Tahsildar to follow provisions of Sections 8, 9 and 10 of the Act. Since, it was not the case for seeking compliance of Sections 8, 9 and 10 of the Act, no fault could be found in Tahsildar not invoking the same.

15. As far as procedure being followed by Tahsildar is concerned, the Tahsildar was required to decide the claim/contention of the contesting Respondent by visiting the spot and accordingly, spot was visited on 12.06.2019 and 27.11.2019. The Tahsildar has categorically recorded in the order impugned that it was the case of the Petitioner that the road existed but it is private road and that though it was allowed to be used earlier, unless land admeasuring 3R is returned to the Petitioner, he will not permit use of the said road by contesting Respondent. There is no contention of the Petitioner either before the SDO in revision or even before this Court that no such statement was made before Tahsildar and the recording to that effect in the order is incorrect. This Court, therefore, finds no reason to discard the same. From the said statement, it is clear that way exists and is obstructed by Petitioner.

16. As far as *locus standi* of the contesting Respondent to file application is concerned, though now it is sought to be argued that land in question is not purchased by the Respondent himself but purchased by

his wife and son, before Tahsildar no objection was raised with regard to locus standi. On the contrary, in the reply it is categorically stated that he is purchaser of the property. It is, therefore, not open for the Petitioner to raise objection now at this stage while challenging orders impugned in this Petition.

17. Considering the summary nature of proceedings to be conducted by Tahsildar and also in view of the provisions of the Act, more particularly, Section 22, the decision of Tahsildar never considered as adjudication of dispute between parties and the order passed is in nature of interim relief. It is always open for the parties to get their dispute adjudicated from the competent Civil Court and the order of competent Court would prevail over order passed by Tahsildar under Section 5 of the Act.

18. In such circumstances, having regard to the facts of the case and more particularly, statements of Petitioner himself before Tahsildar, this Court finds no perversity in the impugned orders. In the result, Petition stands dismissed.

19. At this stage, learned Counsel for the Petitioner seeks continuation of the interim relief for a period of four weeks.

20. Learned Counsel for contesting Respondent opposes for the same.

21. Since relief is granted on 18.12.2020, the same shall continue for further period of four weeks from today to enable the Petitioner to challenge this order before Hon'ble the Supreme Court.

(R. M. JOSHI, J.)