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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6565 OF 2017

Ajaykumar Dilip Shinde ... Petitioner
V/s.
Yashvant Tatoba Dhende & Ors. ... Respondents

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Mr. Umesh R. Mankapure for the petitioner.

Mr. Mahendra Shingade for respondent No.1.

CORAM : AMIT BORKAR, J.

DATED : APRIL 23, 2025

P.C.:

1. The present writ petition assails the legality and propriety of the order passed by the Mamlatdar in exercise of powers conferred under the provisions of the Mamlatdars' Courts Act, 1906 (hereinafter referred to as "the 1906 Act"), whereby the Mamlatdar has restrained the petitioner from creating or constructing a new road on the land in dispute.

2. On a plain reading of the order impugned, it is apparent that the Tahsildar, acting in his capacity as Mamlatdar, has invoked jurisdiction under Section 5 of the 1906 Act, anchoring his conclusion upon a map furnished by the revenue authorities. It is to be observed that the power vested in the Mamlatdar under Section 5 of the Act is of a limited nature—quasi-judicial in

character, to be exercised upon the establishment of actual obstruction or threatened obstruction in the enjoyment of possession of any way, watercourse, or source of water. The jurisdiction is not plenary but circumscribed, and its exercise must be rooted in tangible, immediate, and direct evidence of obstruction, and not based solely on presumptive or derivative materials like revenue maps, which at best carry indicative and corroborative value, but cannot be the sole foundation for an adjudicatory finding under the Act.

3. The legislative intention behind the 1906 Act is to provide a summary remedy for restoration or protection of possession and enjoyment of certain customary rights in land, such as way or water. It is in this light that the evidentiary requirements for invoking jurisdiction must be appreciated. Section 5 mandates a fact-finding inquiry into the existence of the way and its use or obstruction. The mechanism for this inquiry is not merely documentary, but fundamentally factual, including spot inspections, panchanama, statements of neighbouring occupants or cultivators, and other cogent materials. Reliance solely on the map, to the exclusion of other evidence, such as site inspection, sworn statements, or reports of obstruction, undermines the statutory scheme and amounts to an arbitrary invocation of jurisdiction. The Mamlatdar has, in the present case, failed to undertake such an exercise.

4. A map prepared by the revenue department, unless supported by actual user or corroborated by local inquiry, cannot by itself serve as conclusive proof of the existence or obstruction of

a right of way. Cartographic material can reflect entries and demarcations for record-keeping purposes but does not, per se, establish physical or possessory realities on ground. Courts have time and again cautioned against substituting administrative maps for judicially ascertainable facts, particularly in disputes that involve civil consequences.

5. In the facts of the present case, the Mamlatdar's order suffers from a jurisdictional error inasmuch as the essential precondition of establishing the existence or obstruction of the road by way of acceptable legal evidence has not been fulfilled. This renders the impugned orders unsustainable in law.

6. That being said, the remedy available to the respondents is not foreclosed. It is always open to a party alleging obstruction of a way to move a fresh application under the provisions of the 1906 Act. If such application is made, the Mamlatdar shall undertake an inquiry in accordance with the procedure contemplated under the Act, including spot inspection, recording of panchanama, collection of evidence from local inhabitants or adjoining owners, and render a decision based on objective material and established principles of natural justice.

7. In view of the above discussion, the writ petition deserves to be allowed. The impugned orders passed by the Mamlatdar and affirmed by the superior revenue authority are hereby quashed and set aside. Liberty is, however, granted to the respondents to initiate fresh proceedings under the 1906 Act, if they are so advised. If such proceedings are instituted, the Mamlatdar shall decide the

same in accordance with law, uninfluenced by any observation made in this order, and by affording adequate opportunity of hearing to all concerned parties.

8. Rule is made absolute in the above terms. No order as to costs.

9. The writ petition stands disposed of in above terms. No costs.

(AMIT BORKAR, J.)