

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6426 OF 2024

Sharad Kacheshwar Gorde

....*Petitioner*

: *Versus* :

Nagnath Nivrutti Gorde and Ors

....*Respondents*

Ms. Manjiri Parasnis, *for the Petitioner.*

Mr. Anil D. Joshi *with Ms. Sandhya Mailagir, for Respondent Nos.1 and 2.*

Ms. Aloka A. Nadkarni, *AGP for State.*

CORAM : SANDEEP V. MARNE, J.

Dated : 28 March 2025.

P.C. :

1) The petition challenges the order passed by the Sub-Divisional Officer under the provisions of Section 23(2) of the Mamlatdar Courts Act, 1906 rejecting the Revision Application preferred by the Petitioner and confirming the order dated 24 January 2019 passed by the Tahsildar directing removal of obstruction under the provisions of Section 5 of the Act.

2) I have heard Ms. Parasnis, the learned counsel appearing for the Petitioner, Mr. Joshi, the learned counsel appearing for Respondent Nos.1 and 2 and Ms. Nadkarni, the learned AGP for State.

3) The main contention of Ms. Parasnis is that the application filed by Respondent Nos.1 and 2 under the provisions of Section 5 of the Act

was clearly barred under the provisions of Clause-(b) of Section 26. She would submit that for the same cause of action, Respondent Nos.1 and 2 have already filed Regular Civil Suit No.178/2017. She has taken me through the pleadings of Vahivat Case No.19/2017 and the plaint filed in Regular Civil Suit No.178/2017 to demonstrate similarity in pleadings, as well as prayers. She would submit that the application for temporary injunction filed in the Suit has been rejected whereas the Mamlatdar has passed order in favour of Respondent Nos. 1 and 2, thereby resulting in two contradictory orders being passed. She relies on Section 26(b) of the Act in support of her contention that the proceedings before the Mamlatdar were not maintainable in the light of filing of Suit.

4) What is however missed out by Ms. Parasnis is the fact that the land bearing Gat No.157, from which the road passes, is in two portions. One portion of land bearing Gat No.157 admeasuring 0.05 Ares has been purchased by Respondent Nos.1 and 2 who are owners thereof. The balance portion of land bearing Gat No.157 is apparently in the ownership of the Petitioner. It is the case of Respondent Nos.1 and 2 that the land admeasuring 0.05 Ares in Gat No.157 was purchased solely for the purpose of ensuring availability of access road to lands bearing Gat No-160/1, 160/2 and 153 which are admittedly owned by them. The situation here is such that the road passes through two portions of land at Gat No.157 and ultimately leads to the lands of Respondents at Gat Nos.160/1, 160/2 and 153. The road initially passes through that portion of land in Gat No.157 which is owned by the Petitioner. It thereafter continues through the portion of land admeasuring 0.05 Ares in Gat No.157 which is purchased by Respondent Nos.1 and 2.

5) In the above situation, Respondent Nos.1 and 2 perceived twin threats. They first felt that their possession of purchased portion of land admeasuring 0.05 Ares in Gat No.157 was being disturbed by the Petitioner and to the limited extent of protection of their possession of purchased portion of land, Regular Civil Suit No.178/2017 has been filed. The said suit does not contain any prayer for seeking access or easementary road in land belonging to the Petitioner out of Gat No.157. Respondent Nos.1 and 2 also perceived another threat where the Petitioner was blocking the access road passing through his portion of land in Gat No.157. The application under Section 5 of the Act before the Tehsildar was filed with regard to second cause of action to the limited extent where the Petitioner was obstructing the access road passing through his own land in Gat No.157.

6) Thus, the first cause of action for which the suit is filed is to protect possession of purchased portion of land in Gat No.157 by Respondent Nos.1 and 2, whereas Section 5 application is filed in respect of second cause of action where the Petitioner was found obstructing the access road passing through his own land.

7) This is clear from the fact that the operative portion of the order of the Tehsildar dated 24 January 2019 which reads thus :

2) मौजे भरतपुर ता. सिन्नर येथील गट क्र. 157 मधील अर्जदार यांचे हिस्स्यामध्ये जाण्या येण्यासाठी गट क्र. 157 चे दक्षिण बाजुकडील अस्तित्वात असलेला पुर्व पश्चिम वहिवाटी रस्त्यास सा. वाले अथवा त्यांचे प्रतिनीधी यांनी हरकत, अडथळे करुन नये."

8) Thus, the limited relief granted by the Tehsildar under Section 5 of the Act on 24 January 2019 is to direct the Petitioner to remove obstruction created by him in his portion of land admeasuring Gat No.157. The Tehsildar has not transgressed his jurisdiction by passing any order with reference to the land admeasuring 0.05 Ares

which also forms part of Gat No.157 and which is in the ownership of Respondent Nos.1 and 2. On the other hand, the Civil Court is seized of prayer for injunction only in respect of the purchased portion of 0.05 Ares in Gat No.157. The application for temporary injunction by order dated 21 April 2022 is thus restricted to purchased portion of land of 0.05 Ares in Gat No.157.

9) Thus, the suit and application under Section 5 of the Act do not overlap each other. They are filed in respect of distinct portions of land forming part of Gat No.157. Merely because both the portions of land are part of the same Gat No.157, it cannot be contended that both the proceedings are filed for the same cause of action.

10) It is sought to be contended by Ms. Parasnis that the suit filed by Respondent Nos.1 and 2 is ultimately for the purpose of securing access road, which is also the purpose behind filing application under Section 5 of the Act. While she may not be entirely wrong in contending so, it is the choice exercised by the Plaintiffs (*Respondent Nos.1 and 2*) to file suit only to the extent of threat perceived by him with regard to the obstruction of his possession of purchased portion of land admeasuring 0.05 Ares. If ultimately the Civil Court finds that the defendant in the suit (*Petitioner*) has not caused any obstruction to the purchased portion of land admeasuring 0.05 Ares, the suit can well be dismissed. Dismissal of the suit would not affect the order passed by the Mamlatdar on 24 January 2019 which directs removal of obstruction from a different portion of land than the one for which the suit is filed. In my view therefore the decision of the suit would not have any effect on the order passed by the Mamlatdar.

11) In my view therefore, the objection of bar under the provisions of Section 26(b) of the Act is clearly misconceived. Also

misconceived is reliance by Petitioner on judgment of Coordinate Bench of this Court in Raghu s/o. Narayan Dukre & Ors Versus. Gorakshnath s/o. Mahadeo Nalkar & Ors.¹. The judgment is rendered in the facts of that case where both the proceedings were found to be instituted in respect of the same land and for the same cause of action. In the present case, the lands as well as causes of action in respect of two proceedings are distinct. Confusion is sought to be created only on account of the fact that both the lands bear same Gat No.157 and also on account of the fact that there is similarity of pleadings in both the set of proceedings. Otherwise, the purpose for filing both the proceedings are entirely different. Even if the suit is dismissed, the order passed by the Mamlatdar for removal of obstruction in Petitioner's portion of land would continue to subsist.

12) I therefore do not find any palpable error in the order passed by the SDO and the Tehsildar. The petition is devoid of merits. It is accordingly **dismissed** with no order as to costs.

[SANDEEP V. MARNE, J.]

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¹ 2023 (3) Mh.L.J. 77