



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.4394/2024

Shri Ishwar s/o Shrirang Thakre
Vs.
Tahsildar, Umrer and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri R.N. Borwankar, Advocate a/w Shri Suyog Deshpande, Advocate for petitioner
Shri H.D. Futane, AGP for respondent Nos.1 and 2
Shri Ajinkya Joshi, Advocate a/w Shri M.R. Perke, Advocate for respondent No.3
Shri D.R. Galande, Advocate for respondent No.4

CORAM : SMT. M.S. JAWALKAR, J.
DATED : 18/02/2025

Heard learned Counsel for the respective parties.

2. It is contention of the petitioner that in reply to the application by respondents before the Tahsildar, it is specifically averred that there is an alternative way available for respondents. This submission also reflects in the order passed by the Tahsildar dated 18.10.2022 in RM Case No. 01/M.C.A.5/2022-2023. That document placed on record clearly goes to show that there is no compliance of mandatory provisions in Sections 7 to 12 of the Mamlatdars' Courts Act. There is no verification nor it appears that there is any opportunity granted to lead evidence and cross-examine the applicants.

3. Learned Counsel for petitioner relied on

Nanda Yogaji Gawali Vs. Santosh Dattatraya Jadhav
2023 (5) ABR 300, wherein this Court held in paragraph No.17 as under:

“17. In the present matter also, if record perused, it can be seen that the application in question is filed by the respondent is not duly verified as required by Section 10 of the said Act. It was necessary for the Mamlatdar to first verify the contents of plaint in the matter as prescribed under Section 10 of the said Act. The procedure under Section 11 was required to be followed in that regard. On perusal of record, it appears that after calling of report, the Tahsildar passed the order without recording any evidence and without verifying the contents of application, the learned Tahsildar proceeded with the matter. An opportunity to cross-examine the statements on record was required to be given. As held in Jagdish Shriram Dhande 2020 (2) Bom C R 122 : (AIR Online 2019 Bom 1503) (supra), wherein right of cross-examination is a legal right and therefore, there was no question of any application being filed for seeking the right to cross-examine those witnesses. No opportunity was granted to cross-examine the witness. From record, it also can be seen that mandatory procedure was not followed by Tahsildar while allowing the application under Mamlatdar Courts Act. There is no endorsement on the application/plaint to the effect that it was duly subscribed and verified. Thus, it can be concluded that mandatory provision under Section 10 is

not complied by plaintiff to subscribe and verify, the plaint in presence of Mamlatdar in open Court. It also seen that evidence was not recorded specifically when facts are being disputed by respondent. Even learned Additional Collector also not considered this aspect and only on the basis of Circle Inspector report and sale deed, order came to be passed. As such, matter needs fresh consideration as per provisions of law.”

4. The said order of Tahsildar is challenged by the respondent/petitioner herein before the Sub Divisional Officer, Umrer. However, without considering the ground raised in Revision, the Sub Divisional Officer vide order dated 20.10.2023 in Revision Application No.01/MCA-23(5)/2022-2023 confirmed the order passed by the Tahsildar.

5. Learned Counsel for respondents relied on the order passed by this Court in Writ Petition No.6258/2024, however facts involved in the said matter is different. During the spot inspection, the petitioner has admitted his overt act of obstruction. It was not the case of petitioner that disputed road was not in existence prior to the year 2021 or that respondent No.3 to 7 were not using the disputed road to approach their field. However, in the present matter, there is specific defence, which can be substantiated only by leading evidence. As such, citation relied on is of no use of respondents. Accordingly, Writ Petition is allowed on the ground

that there is no compliance of mandatory provisions of Mamlatdars' Courts Act.

6. both the orders passed by the Tahsildar dated 18.10.2022 in RM Case No.01/M.C.A.5/2022-2023 and Sub Divisional Officer dated 20.10.2023 in Revision Application No.01/MCA/-23(5)/2022-2023 are hereby quashed and set aside.

7. The matter is remitted back to the Tahsildar, Umrer, for considering the same afresh by granting due opportunity to the parties and for compliance of mandatory provisions as per the provisions of the Mamlatdars' Courts Act.

8. Parties to appear before the Tahsildar, Umrer on 28.02.2025.

JUDGE

R.S. Sahare