

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.160 OF 2020

1. Mr. Dattu Vinayak Raut Dessai
son of Late Vinayak Dotu Rauto Dessai,
67 years of age, married,
Retired, Indian National,
Residing at House No. 70,
Assolda, Quepem, Goa

2. Mr. Adarsh Dattu Raut Dessai ,
Son of Dattu Vinayak Raut Dessai,
50 years of age, married,
Indian National,
Residing at House No. 70,
Assolda, Quepem, Goa Petitioners.

V/s

Mr. Govind Balkrishna Raut Dessai,
son of Late Balkrishna Raut Dessai,
56 years of age, married,
Service, Indian National,
Residing at House No. ,
Assolda, Quepem, Goa Respondent.

Mr Iftikhar Agha, with Ms Valencia Fernandes, Advocates *for the Petitioners.*

Mr Preeetam Talaulikar, Advocate *for the Respondent.*

CORAM : VALMIKI MENEZES, J.

Reserved on : 01/02/2024
Pronounced on : 10/05/2024

JUDGMENT :-

1. Heard learned Counsel for the parties.
2. Rule. With the consent of the parties, the Petition is heard forthwith.
3. The Petitioner invokes the supervisory jurisdiction of this Court under Article 227 of the Constitution of India to challenge Judgment dated 22/10/2019 passed by the Addl. Collector - II, South Goa, Margao dismissing a revision application filed by the Petitioners under Section 22 of the Goa Mamlatdar's Court Act, 1966 (Act); the Judgment of the Collector confirms an order dated 28/11/2017 passed by the Mamlatdar-II of Quepem Taluka, allowing the Respondent's complaint dated 9/7/2015 filed under Section 4(f) of the Act, directing the Petitioners to remove rubble stone dumped on an access road leading to land under Survey No.32/1 of Village Xic-Xelvona.
4. For the purpose of deciding this matter, the following facts, as are found recorded in the Petition, are relevant :
 - (A) The Petitioners filed Regular Civil Suit 21/2014 before the Civil Court at Quepem, claiming that various properties belonging to their ancestors were owned by them, along with the Defendants in the suit, and pursuant to an oral partition

amongst the co-owners, the Petitioners were in possession and exclusively enjoying various parcels of land including land under Survey Nos.32/1 and 32/2; the Respondents i.e Defendant No.3 in the suit and the Applicant in the proceeding before the Mamlatdar. The suit sought a relief of a declaration that the Petitioner No.1 and Defendant No.14 therein were owners in possession of the suit properties described in para 23 of the plaint, which included land under Survey No.32/1.

(B) In the Written Statement filed by some of the Defendants, which included the Respondent, it was admitted in para 9 that suit properties were orally partitioned but, however, the shares claimed by the Plaintiffs were denied; it was also denied that land under Survey Nos.32/1 and 32/2 is not the property "Cajatollem Chovatto", but is the property "Cormagalli" under Land Registration No.821.

(C) Whilst the suit was pending, claiming the Petitioners had blocked access to land in his possession under Survey No.32/1, the Respondent filed a complaint on 9/7/2015 to the Mamlatdar of Quepem invoking the provision of Section 4(f) of the Act; the Respondent sought intervention of the Mamlatdar for restoration of his access to land claimed by him under his cultivation in Survey No.32/1. The Petitioners filed their reply to the complaint on 26/11/2015 and, whilst this case was pending, the Respondent filed Regular Civil Suit No.20/2016/B against the Petitioners for permanent injunction and

declaration, on the basis that they along with the Defendants 1 and 2 (Petitioners) are co-owners of a property known as "Angrumada" surveyed under No.4/59 of village Assolda with an application for temporary injunction to restrain the Petitioners from carrying out any construction in this property.

(D) The parties led evidence before the Mamlatdar and respectively produced reports of experts/surveyors to support their contentions, as to the location of the access/blockage/ alternate access. From the statements made by the learned Advocate for the Petitioners, it appears that the Mamlatdar also conducted a site inspection. A detailed plan of the location of the highway and internal access and the location of the blockage of access, in relation to the properties held by the parties were produced by both sides before the Mamlatdar. On hearing arguments of the parties, the Mamlatdar passed the impugned order dated 28/11/2017 holding that an access did exist to the part of the land under Survey No.32/1 held by the Respondent, through the portion of the property under Survey No.32/1 in possession of the Petitioners; it was further held that the Petitioner had in fact blocked the access to the Respondent's parcel of land passing through Survey No.33 to the main road and accordingly directed the Petitioners to clear the access by removing the rubble stone dumped on the road.

(E) This order was challenged before the Collector, who has confirmed the findings of the Mamlatdar and rejected the

contentions of the Petitioners that in the circumstances of the case, the Mamlatdar lacked jurisdiction under Section 4 of the Act.

5. I have heard the learned Advocate Eftikhar Aga, with V. Fernandes for the Petitioners and Shri Preetam Talaulikar for the Respondents. I have perused the record of the authorities below.

The main contentions of the Petitioners are :

- (a) That the Mamlatdar in the circumstances of the case that suits were pending between the parties, lacked jurisdiction to decide the question of easementary rights of the Respondent, when the question of ownership of the properties itself was before a Civil Court.
- (b) That the Mamlatdar lacked the jurisdiction to proceed to deal with the complaint under Section 4 of the Act for want of compliance with the provisions of Sections 6, 7, 8, 9 and 10 of the Act, as the plaint was not endorsed nor was it verified;
- (c) That both the authorities had failed to consider the evidence on record and the findings arrived at by them are perverse and not founded on a correct appreciation of the evidence before them.

Countering these submissions, Shri Preetam Talaulikar for the Respondent supports the impugned orders, contending that the Mamlatdar has jurisdiction under Section 4 to decide the disputes which concern a right of way, notwithstanding the pendency of a title dispute between the parties in a Civil Court; he submits that the scope of the jurisdiction of the Mamlatdar under the Act is well settled and the Act confers powers of granting certain reliefs in terms of Section 4, read with Section 18 of the Act, which include the power to restore a right of way obstructed or encroached upon by the other party, without authority of law. He further submits that the Gujarat High Court has examined similar provision of the Bombay Mamlatdar's Court Act, 1906, in a challenge to the vires of that Act, in *Lakshmanbhai Ukabhai Parmar & Anr. vs. Karmisibhai Lalabhai Parmar* reported in 2014 SCC OnLine Gujarat 982. He submits that the Gujarat High Court has upheld the vires of that Act and accepted the position that the power to adjudicate a right of way could be vested in an Executive Authority.

6. In the light of the submissions made above, the question before me is whether the impugned orders of the Authorities under the Act have been passed in excess or in contravention of the jurisdiction vested in these Authorities under the Goa Mamlatdar's Court Act.

The powers of the Mamlatdar to grant various reliefs are set out in Section 4 of the Act, which are quoted below :

"4. Powers of Mamlatdar's Court. – (1) Every Mamlatdar shall preside over a Court, which shall be called a Mamlatdar's Court, and which shall subject to the provisions of sections 5 and 24 have power, within such territorial limits as may, from time to time, be fixed by Government by notification in the Official Gazette –

(a) to remove or cause to be removed any impediment erected otherwise than under due authority of law, to the natural or customary flow in a defined channel or otherwise of any surface water rising in or falling on any land used for agriculture or for trees or other crops, on to any adjacent land, where such impediment causes or is likely to cause damage to the land used for such purposes or to any grazing, trees or crops thereon;

(b) to give immediate possession of any lands or premises used for agriculture or trees or crops, or fisheries, or to restore the use of water from any well, tank, reservoir, canal or water-course, whether natural or artificial used for agricultural purposes to any person who has been dispossessed or deprived thereof otherwise than under due authority

of law, or who has become entitled to the possession or restoration thereof by reason of the determination of any tenancy or other right of any other person, not being a person who has been a former owner or part-owner, within a period of twelve years before the institution of the suit, of the property or use claimed, or who is the legal representative of such former owner or part-owner;

(c) to remove or cause to be removed any refuse, mining reject or other substance which has been dumped

or placed otherwise than under due authority of law on any agricultural land;

(d) to give immediate possession of any dwelling house situated in any land used for purposes of agriculture to any tenant or agricultural labourer who has been dispossessed or deprived thereof otherwise than under due authority of law;

(e) to give immediate possession to a mundcar of any dwelling house held by him as such of which he has been dispossessed or deprived otherwise than under due authority of law;

(f) to restore or cause to be restored any right of way which has been obstructed or encroached upon otherwise than under due authority of law;

(g) to restore or cause to be restored any right to use or take water for purposes of irrigation or domestic use of which any person has been deprived otherwise than under due authority of law.

(2) The said Court shall also, have power within the said limits, where any impediment referred to in clause (a) of sub-section (1) is erected, or an attempt has been made to erect it, or when any refuse, mining reject or other substance is placed or sought to be placed, otherwise than by due authority of law on any agricultural land, or when any person, is otherwise than under due authority of law disturbed or obstructed, or when an attempt has been made so to disturb or obstruct any person in the possession of any lands or premises used for agriculture or trees, or crops or fisheries, or in the use of water from any well, tank, reservoir, canal or water-course, whether natural or

artificial, used for agricultural or domestic purposes, or any such dwelling house as is referred to in clause (d) of subsection (1), or in the use of roads or a right of way thereto, to issue an injunction to the person erecting or who has attempted to erect such impediment, or causing, or who has attempted to cause, such „disturbance or obstruction requiring him to refrain from erecting or attempting to erect any such impediment or from causing or attempting to cause any further such disturbance or obstruction.

(3) *No suit shall be entertained by a Mamatdar's Court unless it is brought within one year from the date on which the cause of action arose:*

Provided however that a suit in respect of which the cause of action arose before the commencement of this Act may, if it is otherwise not barred by any law for the time being in force, be entertained within one year of such commencement.

(4) *The cause of action shall be deemed to have arisen on the date on which the impediment to the natural or customary flow of surface water or the dispossession, deprivation, obstruction, encroachment or determination of tenancy or other right or the unauthorised dumping occurred, or the attempted impediment or disturbance or dispossession or obstruction or encroachment or dumping or deprivation first commences.*

Explanation:— The exercise by a joint owner of any right which he has over the joint property is not a dispossession, or disturbance of possession of the other joint owner or owners within the meaning of this section."

7. The Explanation below Section 4 stipulates that the exercise of a right by a joint owner over joint property does not amount to dispossession or disturbance of possession of other joint owner.

The procedure and the manner in which the powers under section 4 are to be exercised by the Mamlatdar are set out in Section 18 of the Act, which reads as under :

"18. Procedure and powers of Mamlatdar's Court. – (1) On the day fixed or on any day to which the proceedings may have been adjourned, the Mamlatdar shall, subject to the provisions of section 15 proceed to hear all the evidence that is then and there before him, and to try the following issues, namely:–

(a) If the plaintiff avers that the natural flow of surface water from his land has been impeded by any erection raised by the defendant causing damage or likelihood of damage to the plaintiff's land or to any grazing, trees or crops thereon –

(i) whether surface water flowed in a defined channel or otherwise, naturally or customarily from plaintiff's land on to the defendant's land;

(ii) whether the defendant erected any impediment to such flow, otherwise than under due authority of law;

(iii) whether the suit was filed within the time allowed by sub-section (3) of section 4;

(iv) whether such impediment has caused or is likely to cause damage to plaintiff's land or to any grazing, trees or crops thereon; (b) If the plaintiff avers that he has been

unlawfully dispossessed of any property or deprived of any use –

(i) whether the plaintiff or any person on his behalf or through whom he claims was in possession or enjoyment of the property or use claimed;

(ii) whether the defendant is in possession at the time of the suit, and, if so, whether he obtained possession otherwise than by due course of law;

(iii) whether the suit was filed within the time allowed by sub-section (3) of section 4;

(c) If the plaintiff avers that he is entitled to possession of any property or restoration of, any use by reason of the determination of any tenure or other right of the defendant in respect thereof –

(i) whether the defendant is in possession of the property or in the enjoyment of the use by a right derived from the plaintiff or from any person through whom he claimed;

(ii) whether the suit was filed within the time allowed by sub-section (3) of section 4;

(iii) whether the defendant is other than a person who has been a former owner or part-owner within a period of twelve years before the institution of the suit of the property or use claimed, and other than the legal representative of such former owner or part-owner.

(d) If the plaintiff avers that he is still in possession of the property or in the enjoyment of the use, but that the defendant disturbs or obstructs, or has tempted to disturb or obstruct him in his possession or use –

- (i) whether the plaintiff or any person on his behalf is actually in possession or enjoyment of the property or use claimed;
 - (ii) whether the defendant is disturbing or obstructing or has attempted to disturb or obstruct him in such possession or enjoyment;
 - (iii) whether the suit was filed within the time allowed by sub-section (3) of section 4.
- (e) If the plaintiff avers that he is in possession of any agricultural land, and that the defendant has placed, or threatens to place any refuse, mining reject or other substance thereon –
- (i) whether the plaintiff or any person on his behalf is actually in possession or enjoyment of the land in question;
 - (ii) whether the defendant has placed or is attempting to place any refuse, mining reject or other substance, without due authority of law;
 - (iii) whether the suit was filed within the time allowed by sub-section (3) of section 4.
- (f) If the plaintiff avers that he is entitled to a right of way and that the defendant has obstructed or has encroached upon it –
- (i) whether the plaintiff or any person on his behalf was in beneficial enjoyment of the right of way; (ii) whether the defendant has obstructed or encroached upon it otherwise than under due authority of law;

(iii) whether the suit was filed within the time allowed by sub-section (3) of section 4.

(g) If the plaintiff avers that he has been deprived of any right to use or take water for purposes of irrigation or domestic use –

(i) whether the plaintiff or any person on his behalf was in enjoyment of the right to use or take water;

(ii) whether the defendant has deprived the plaintiff of such right otherwise than under due authority of law;

(iii) whether the suit was filed within the time allowed by sub-section (3) of section 4.

(2) The Mamlatdar may, after due notice to, and in the presence of the parties, summon and examine as a witness any person who has not been summoned or produced, and may call for and cause to be proved any document which has not been applied for or produced, by either of the parties, where he considers it expedient in the interests of justice so to do, and may, if he thinks fit, make a personal inspection of the property in dispute in the presence of, or after due notice to, the parties.

He shall after hearing the parties if present record on the spot without unnecessary delay a memorandum of any relevant facts observed at such inspection. The memorandum shall form part of the record of the case.

(3) The Mamlatdar shall make or cause to be made a memorandum of the substance of the evidence of each witness as the examination of the witness proceeds. The memorandum shall be signed by the Mamlatdar, read over or explained to the witness and his signature obtained thereon.

(4) Where the Mamlatdar's finding upon the issues for which he shall briefly record his reasons, is in favour of the plaintiff, he shall make such order, as the circumstances of the case appear to him to require, and where his finding is in favour of the defendant, he shall dismiss the suit. In either case the costs of the suit including the costs of execution shall follow the decision except in special circumstances for reasons to be recorded in writing by the Mamlatdar."

8. We are concerned in the present matter with the exercise of powers vested in the Mamlatdar under Section 4(f), read with the power under sub-Section (2) of Section 4 to remove an impediment to the use of roads or a right of way which has been obstructed.

The procedure and powers of the Mamlatdar under clause (f) of Section 18 confers jurisdiction upon a Mamlatdar to remove any obstruction and encroachment on a right of way if the Plaintiff avers his entitlement to such right of way, and that the same is for the beneficial enjoyment of any land.

9. It is the Plaintiff's case in his complaint that he owns and possesses a part of land under Survey No.32/1 wherein he has a plantation of coconut trees, cashew trees, mango grafts, beetle nuts and paddy. Though, there is a dispute as to whether this survey holding has been partitioned in the manner claimed by the Petitioners as pleaded in Regular Civil Suit No.21/2014, or whether such a claim raised to the fact that this survey holding has been already partitioned, the fact that there was a common

access to the various parts of the suit property through survey No.33 to the main road, is not in dispute.

10. In *Lakshmanbhai Ukabhai Parmar* (*supra*), Gujarat High Court was dealing with a similar position contained in Section 5 of the Mamlatdar's Court Act, 1906 applicable to that State, wherein a similar provision as found in Section 4 is contained. The challenge to the vires of this provision, in that matter, was mainly on the ground that the Court of the Mamlatdar would not be vested with a power to decide a right of way over a property or easementary rights of parties since such rights, being of civil nature, would fall exclusively within the domain of the powers of the Civil Court, and allowing an alternate forum like a Mamlatdar to also decide such issues, would result in conflict of jurisdiction. The further ground taken for the challenge to the vires of the provision was that vesting judicial powers of the Civil Court in an Executive Authority, such as the Mamlatdar without providing for regular first appeal, renders such adjudication ultra vires the Constitution of India; yet another ground raised was that vesting such powers on the Mamlatdar/Executive were arbitrary and violative of Article 14 of the Constitution of India in that it amounted to denuding the Civil Court of its powers to decide complex questions of fact and law of easementary rights over a property.

11. From the evidence on record, it is also not in dispute that the Petitioners claimed that they had, in fact, dumped rubble on

the access road in the area in their possession, but they claimed that they have a right to maintain this rubble dumped over the access as they are exclusive owners of this portion of land under Survey No.32/1 .

Rejecting all these contentions, Gujarat High Court held that the Mamlatdar's Court Act, as a legislative enactment could not be struck down on either the ground that the State Legislature was incompetent to make such a law or on the ground that it takes away or abridges any fundamental rights of a citizen. It further held that conferment of a right to decide questions relating to subject matters which are legal rights of a citizen in the Executive does not infringe upon the citizens' fundamental rights.

12. The provisions of Section 4, read with Section 18 of the Goa Mamlatdar's Court Act has similar provisions and vests the power of deciding whether a right of way is required to be restored in the Executive. The only question requires to be decided is whether the Mamlatdar has acted in any manner, beyond the jurisdiction vested in him under the Act by granting an order directing restoration of the access to the property in enjoyment of the Petitioners.

Perusal of the pleadings in the suits between the parties would reveal that though there is a contest as to whether the property concerned in this matter under Survey No.32/1 was

mutually partitioned and enjoyed separately by the Plaintiffs and the Defendants or whether it required to be partitioned by metes and bounds, the question is open before the Civil Suit. Neither party has sought a relief of temporary injunction against the order on the question of right of way for the enjoyment of the portions respectively claimed by them. In that view of the matter, there was no conflict between the area of controversy i.e. the right of way or easementary right between the matter pending in the Civil Court and the application under Section 4 of the Act before the Mamlatdar. This being the situation, the Court of the Mamlatdar was well within its power to proceed to decide the issue before it i.e. whether the claim of the Plaintiff to a right of way existed and if it did exist, whether the Plaintiff was entitled to a relief of restoration of his right of way.

13. The Petitioners have subjected themselves to the jurisdiction of the Mamlatdar by leading evidence and producing an expert's report to contest the position that the Plaintiff had no right of way, as also advanced the argument that the Plaintiff had an alternate access to the property in his possession. Following this course, the Petitioners have invited the findings on fact by the Mamlatdar on both these issues of whether there existed a right of way and whether such right of way was in fact blocked by the Petitioners by dumping rubble on the same and creating an impediment to free access. Both

these findings have been rendered in favour of the Plaintiff and considering detailed evidence, and the same cannot be termed to be perverse or in any manner, contrary to the record. The finding of the Mamlatdar that the alternate access claimed to be in existence by the Petitioners was not available due to the passing of a water pipe line across it, also cannot be termed to be a finding de hors the evidence on record. This find is supported by a surveyor's report placed on record which was confirmed during a joint site inspection fixed by the Mamlatdar, at which the Petitioners chose to remain absent. The finding of non-existence of an alternate access and the actual use of a right of way by the Petitioners for more than 15 years does not call for any interference, as such finding cannot be termed as perverse or not based upon the evidence on record.

14. The Collector has exercised revisional jurisdiction and, in fact, reappreciated all the evidence on record and arrived at a concurrent finding of fact on both these relevant issues. The jurisdiction exercised by the Collector cannot be faulted. There is, therefore, no cause or grounds shown for the interference with these concurrent findings of fact in supervisory jurisdiction of this Court.

15. The grounds raised by the Petitioners that the Mamlatdar did not follow the procedure laid down in Sections 6 to Section 10 of the Act, is also without any substance. Section 6 stipulates

that suits under this Act shall be commenced by a plaint which shall contain certain details as enumerated in clauses (a) to (j). Section 7 empowers the Mamlatdar to entertain any kind of petition and treat the same to be a plaint falling within the scope of Section 4 and on the Petitioner expressing desire to proceed with the matter, shall endorse such desire upon the plaint and then examine the Plaintiff on oath where the plaint does not contain particulars specified in Section 6. Section 9 requires the Mamlatdar to get the plaint verified by the Plaintiff with a declaration in the form specified in that provision and thereafter proceed to issue notice to the Defendant and conduct an inquiry.

The reply of the Petitioners/Original Defendants is signed by their Advocate and not the Defendants themselves and does not raise any objection to proceed with the inquiry on the grounds that none of these provisions have been complied with. In my opinion, the provisions of Sections 6 to section 10 of the Act ought to be viewed not strictly, but in a manner where the Mamlatdar would be dealing with the Plaintiff more in a manner of assisting him as an Executive Authority. Non-compliance of these provisions, in their strict sense, would not be fatal to the maintainability of the case before the Mamlatdar. The Petitioners have, in any case, not raised any objections on these grounds to proceed with the inquiry and have, in fact, participated in the inquiry at all stages until the conclusion of

the matters. Based on the conduct of the Petitioners, these contentions are, hereby, rejected.

16. For all the above reasons, this Petition is dismissed. Rule is discharged. No costs.

VALMIKI MENEZES, J.

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