

Shakuntala

## IN THE HIGH COURT OF BOMBAY AT GOA

### WRIT PETITION NO.102 OF 2024

1. Manorati Mukund Gaude  
wife of Mr. Mukund Gaude,  
Indian National, Aged 63 years

2. Mukund Khemu Gaude  
Son of Mr. Khemu Gaude,  
Indian National, Aged 74 years  
Both residing at H.No. 1142,  
Dhonshi, Nageshi, Ponda, Goa.

.... PETITIONERS

Versus

1. Mr. Guru Sheddu Gaude  
son of Mr. Sheddu Gaude  
Indian National

2. Mrs. Vithai Guru Gaude  
Wife of Mr. Guru Gaude

3. Raksha Guru Gaude  
Daughter of Mr. Guru Gaude

4. Riddhi Guru Gaude  
Daughter of Mr. Guru Gaude  
All Indian Nationals and  
both major in age, residing,  
Dhonshi, Nageshi, Bandora,  
Ponda-Gao.

....RESPONDENTS

Mr. Shivraj Gaonkar with Mr. Prabhav P. Sirvoicar for the  
Petitioner

Mr. A.D. Bhobe with Ms. S. Shaikh for Respondents.

**CORAM: BHARAT P. DESHPANDE, J.**

**RESERVED ON: 24<sup>th</sup> April, 2024**

**PRONOUNCED ON: 02<sup>nd</sup> May, 2024**

**JUDGEMENT**

1. Rule. Rule is made returnable forth with. Heard finally with consent.

2. A very interesting issue cropped up in the present petition wherein the question is whether a Mamlatdar is having powers to grant temporary relief in the form of temporary injunction in a proceedings filed under Section 4(1)(2) of the Mamlatdar's Court Act , pending the inquiry for grant of final relief?

3. The Petitioners along with the proceeding under Section 4, applied for grant of temporary injunction thereby directing the Respondent to remove the obstruction and clear the traditional way during pendency of the main proceedings. Such application for grant of temporary injunction was allowed by the Mamlatdar vide its order dated 12.09.2023 thereby directing the Respondent to remove the obstruction on the access, till the main application is disposed of.

4. The Respondent challenge such order of grant of temporary injunction, before the additional collector in an appeal filed under

section 22 of the Mamlatdars Court Act.

5. The Additional Collector vide its impugned judgement dated 27.12.2023, allowed the said appeal only on the ground that the Mamlatdar is not having jurisdiction to grant any temporary relief under the Mamlatdar's Court Act.

6. While deciding such appeal, the learned Additional Collector's Court relied upon two decisions passed by this court. The first decision is in the case of *Sandip Bhagvatrao Bhakare Vs. Santosh Mohanlal Dave and others, 2022(2)Mh.L.J.,516*. The second decision is in the case of *Tulsidas Bhiku Naik Vs. Dumen Silveira, 2021 SCC OnLine Bom 6193*.

7. In both the above decisions the learned Single Judge of this Court while considering the provision of Mamlatdar Court's Act applicable to the State of Maharashtra and also applicable to the State of Goa decided that since there is no powers to the Mamlatdar expressly provided in the Act to grant any interim relief, the Mamlatdar is not empowered to grant any such interim relief, though he is entitled to pass final relief. It was further observed in the above case that the powers must be expressly provided and in absence of it, the same cannot be introduced by judicial process or by considering inherent powers.

8. In the case of *Tulsidas(supra)*, the learned Single Judge of this Court while dealing with the provisions of the Mamlatdar's Court Act 1966 applicable to State of Goa and in similar circumstances found that such authority had no power to grant any temporary relief pending the proceedings. Reliance was placed in the case of *Sandip Bhagvatrao Bhakare(supra)*.

9. In the case of *Sandip(supra)*, the learned Single Judge of this court while considering the powers of Mamlatdar's Court Act as applicable to the State of Maharashtra and after going through the provisions therein held that when the legislature intentionally avoided to mention any power to grant interim relief, such power cannot be inferred.

10. Heard Mr. Shivraj Gaonkar with Mr. Prabhav P. Sirvoicar learned counsel appearing for the Petitioner and Mr. A.D. Bhobe with Ms. S. Shaikh, learned counsel appearing for Respondents.

11. Mr Shivraj Gaonkar learned counsel for the Petitioner would submit that in both the matters that is *Sandip Bhakare (supra)* and *Tulsidas Naik(supra)*, the decision of the Apex Court in the case of *Sakiri Vasu Vs. State of Uttar Pradesh, (2008) 2 SCC 409*, *Siddharam Satlingappa Mhetre Vs. State of Maharashtra, (2011) 1 SCC 694*, *Medical Council of India Vs. JSS Medical College,*

*(2012) 5 SCC 528, Dr Ashok Shrawan Bawaskar Vs. National Medical Commission, 2022(4) Mh.L.J., 691, Smt. Savitri Govind Singh Rawat Vs. Govind Singh Rawat, AIR 1985, 4 SCC 337,* were not brought to the notice of both the learned Single Judges.

12. Mr Gaonkar would submit that when a statutory power is conferred upon the Mamlatdar as provided under Section 4 of Mamlatdar Court's Act 1966 including to restore or cause to be restored any right of way which has been obstructed or encroached upon otherwise then under due authority of law, includes the power to implement such order as well as to protect such rights of the authorities by way of granting interim relief.

13. Mr Gaonkar while placing reliance to Section 4 (2) of Mamlatdar Court's Act submits that there is power to issue injunction to a person erecting or attempting to erect such impediment or causing or attempted to cause disturbance or obstruction requiring him to restrain from erecting or attempting to erect such impediment or causing or attempting to cause disturbance. He would submit that when the power to grant injunction is vested in the Mamlatdar, it implies the power to grant interim injunction or temporary injunction. For that purpose, there is no need for any specific provision in the Act.

**14.** In this regard, Mr. Gaonkar invited attention of the Court to various provisions of Goa Daman and Diu Mamlatdar Court's Act 1966 and Rules thereunder. According to him, the powers vested with the Mamlatdar and proceedings to be entertained by the Mamlatdar are akin to a civil suit as it commenced with a plaint. Even, the powers to verify and reject the plaint is available. He would submit that the Mamlatdar is vested with the power to even summons the witnesses and examine them before it.

**15.** Per contra the learned counsel Shri Bhobe appearing for the Respondent would submit that there is no power with Mamlatdar to grant any interim injunction or relief as contemplated under the said Act. The power is only to grant final relief and that too after a detailed enquiry.

**16.** Mr Bhobe would then submit that a special power is given to the Mamlatdar only to grant certain reliefs as found mentioned in Section 4 and nowhere provides for grant of any interim relief or interim injunction during the pendency of the proceedings. He would, therefore, submit that when the legislature preferred not to grant any powers to the said authority during the pendency of the proceedings including interim relief for injunction, such power cannot be inferred, since it is a Special Act. He submits that the

Mamlatdar is not having inherent powers as provided under Section 151 of CPC which are available to the Civil Court.

**17.** Rival contentions fall for determination.

**18.** The Petitioner filed a plaint before the Court of Mamlatdar under Section 4(1)(f)(2) for illegally blocking traditional access/pathway against the Respondents. Necessary documents were attached to the plaint. Along with the said plaint, Petitioners also preferred an application for grant of temporary injunction and interlocutory order.

**19.** In the said application, it is the case of the Petitioner that the traditional access/pathway approaching to their dwelling house is blocked by putting stones and other materials. The Petitioner, therefore, prayed that till the disposal of the main proceedings and by way of temporary relief, the Respondents be directed to remove the impediment/blockage/obstacles from the traditional pathway/access.

**20.** Affidavit in reply to such application was filed by the Respondent denying such contentions. Arguments were advanced by both the parties and thereafter, the learned Mamlatdar vide its order dated 12.09.2023 granted such temporary relief thereby, directing the Respondents to remove obstructions on the access till

the disposal of the main proceedings.

21. Being aggrieved by such order, the Respondents preferred an appeal before the Additional Collector South Goa at Ponda by filing an Appeal No.1 of 2023. The Additional Collector vide its impugned order dated 27.12.2023 allowed the said appeal and quashed and set aside the order passed by the learned Mamlatdar only on the premise that the Mamlatdar is not having jurisdiction to pass any temporary injunction or relief. The learned additional collector placed reliance in the case of *Sandip(supra)* and *Tulsidas(supra)* while holding that such power is not available to the Mamlatdar.

22. Therefore, it is necessary to look into the observations of the learned Single Judge in the case of *Tulsidas (supra)*. In that case, the learned Mamlatdar as well as the Additional Collector found that the Petitioners/Applicants are entitled for temporary injunction thereby, directing the other side to remove the wooden fencing from the suit way during pendency of the proceedings before it. Tulsidas/Petitioner challenged such orders before this Court. While placing reliance in the case of *Sandip(supra)*, it was observed that the entire scheme of the Mamlatdar's Court Act would clearly go to show that the Mamlatdar is not having any power to grant any



temporary relief. It was further observed that when the Court is creature of a statute, it can exercise power limited to the power granted under the provisions of such statute and nothing can be imported into the statute to read the power beyond what is specifically granted to the concerned Court. Thus, the learned Single Judge in the case of *Tulsidas(supra)* fully relying upon the observations in the case of *Sandip(supra)* allowed the petition and set aside the orders passed by the Mamlatdar as well as the Additional Collector while deciding the temporary injunction application only on the ground that such power is not conferred on the Mamlatdar under the said Act.

**23.** It therefore is necessary to look into the decision passed in the case of *Sandip(supra)* by the learned Single Judge while sitting at Nagpur Bench. A perusal of this judgement would go to show that it is in connection of Mamlatdar's Court Act 1906 which is applicable to the State of Maharashtra.

**24.** The learned Single Judge while considering various provisions of the said Act observed that though Code of Civil Procedure was introduced in the year 1908 that is subsequent to Mamlatdar's Court Act 1906, and thus, powers in Code of Civil Procedure 1908 cannot be brought in for the purpose of conferring

such powers to the Mamlatdar. The learned Judge observed that the provisions of statute have to be construed and read on to have the meaning, power and authority which is specifically conferred by the provisions of the said statute and not otherwise. Nothing can be imported into the statute which has not been provided therein by adopting any device or means.

25. A perusal of both these decisions in the case of *Tulsidas(supra)* and *Sandip(supra)* would clearly go to show that the decision of the Apex Court in the case of *Sakiri Vasu(supra)* and others referred by Mr Gaonkar were not brought to the notice of the learned Judges.

26. The contention of Mr Gaonkar that the statutory powers granted to an authority to grant the final relief, implies in it powers to grant interim relief. While placing heavy reliance in the case of *Sakiri Vasu(supra)*, Mr Gaonkar submits that the ratio laid down therein is fully applicable to the matter in hand.

27. In the case of *Sakiri Vasu(supra)* the Apex Court was called upon to discuss incidental/implied powers of the Magistrate to direct/monitor police investigation under Section 156 (3) of Criminal Procedure Code. While applying the doctrine of implied powers, the Apex Court observed in para 18 that when the power is

given to an authority to do something it includes such incidental or implied powers which would ensure the power to do all that thing. In other words, when any power is expressly granted by the statute, there is impliedly included in the grant, even without special mention, every power and every control the denial of which would render the grant in itself ineffective. Where an act confers jurisdiction, it impliedly also grants power of doing all such acts or employ such means as are essentially necessary for its execution.

**28.** In the case of *Savitri(supra)*, the Apex Court while dealing with powers of Magistrate under Section 125 of Criminal Procedure Code to grant maintenance observed that such power implied in it the power to grant interim maintenance during the pendency of the main proceedings. In that case, Savitri filed an application under Section 125 of the Criminal Procedure Code and along with the main application, she also applied for interim maintenance order during pendency of the main application. The learned Magistrate declined such relief on the ground that there is no express provision enabling him to pass interim order. Being aggrieved by such order, Savitri filed a special leave petition under Article 136 of Constitution of India. While observing that there is

no express provision in the code authorising the Magistrate to make an interim order, the Apex Court discussed the question as to whether such power can be implied to be vested in the Magistrate having regard to the nature of the proceedings under Section 125 and other cognate provisions found in chapter IX of the Code. While dealing with this aspect, the Apex Court observed that in order to interpret the provisions of chapter IX of the Code in such a way that the contention placed on them would not defeat the very object of the legislation. It goes to observe that in absence of any express prohibition, it is appropriate to constitute the provisions in chapter IX as considering an implied power on the Magistrate to direct the person against whom an application is made under Section 125 of the code to pay some reasonable sum by way of maintenance to the applicant pending final disposal of the application. The apex court further observed that it is quite common that application under Section 125 of the code takes several months for being disposed of finally. In order to enjoy to the fruits of the proceedings under Section 125, the Applicant should be alive till the date of the final order and that the Applicant can do in a large number of cases only if an order for interim maintenance is passed by the Court.

29. The Apex Court further observed that every Court must be deemed to possess by necessary intendment all such powers as are necessary to make its order effective. The principle which is embodied in the maxim “*ubi aliquid conceditur, conceditur et id sine quo res ipsa esse non potest*” (Where anything is conceded, there is conceded also anything without which a thing itself cannot exist). Whenever anything is required to be done by law and it is found impossible to do that thing, unless something not authorised in express terms be so done then that something else will be supplied by necessary intendment.

30. In the case of *Siddharam(supra)*, the Apex Court was mainly dealing with the power of anticipatory bail and whether a time limit could be restricted up to filing of the charge-sheet. In this regard, the Apex Court also observed that when the power to grant anticipatory bail exists in a Court, it implies that such Court is also having power to grant ad interim relief by way of ad interim anticipatory bail during the pendency of such application.

31. In the case of *Medical Council of India(supra)*, the Apex Court observed in para 11 that power to grant final relief implies within itself power to grant interim relief unless it is specifically prohibited by law.

32. In the case of *Super Cassetts Industries Ltd vs Music Broadcast Pvt. Ltd*, AIR 2012 SC 2144, the Apex Court was dealing with powers under Section 31 of the Copyright Act conferred on the board. In that context, it was observed that under Section 31, the court passed an interim order pending complaint under the said provisions. The tribunal discharging quasi judicial function are generally considered to be vested with incidental and ancillary powers to discharge their functions. Such incidental powers could be said to exist in order to preserve the status quo but not to alter the same.

33. In the case of *Grindlays Bank Ltd Vs. Central government Industrial Tribunal 1980 (Supp) SCC 420*, of the Apex Court while considering the question as to whether industrial tribunal had any jurisdiction to set aside an ex-parte award when it was passed in evidence. The Apex Court observed that when the tribunal had power to pass impugned order, it is also empowered with such ancillary or incidental power as are necessary to discharge its functions effectively for the purpose of doing Justice between the parties.

34. In the case of *Dr. Ashok Bhawaskar(supra)*, the Division Bench of this Court while dealing with Section 30 of the National

Medical Commission Act in connection with disciplinary action against a medical practitioner for professional misconduct was called upon to decide as to whether ethics and medical registration board while dealing with an appeal, is entitled to stay disciplinary action taken by the State Medical Council. In this regard and after discussing various decisions, the Division Bench found that though Section 30 of the said Act is silent about grant of interim relief or stay, such power could be impliedly considered, in order to effectively protect the rights of the parties. While relying on the decision in the case of *Income Tax Officer vs M.K Mohanmmad Kunhi, AIR 1969 SC 430*, the Division Bench observed that such incidental and ancillary powers are to be inferred when the relief which could be finally granted is available with the statutory authorities.

**35.** In the case of *Income Tax Officer(supra)*, the Apex Court observed in paragraph 4 as under:

*“4. It is firmly established rule that an express grant of statutory power carries with it by necessary implication the authority to use all reasonable means to make such grant effective (Sutherland Statutory Construction, Third edition, Articles 5401 and 5402). The powers which have been conferred*

*by section 254 on the Appellate Tribunal with widest possible amplitude must carry with them by necessary implication all powers and duties incidental and necessary to make the exercise of those powers fully effective. In Domats Civil Law, Crushing Edition, Vol. 1, at page 88 it has been stated;*

*“It is the duty of the judges to apply the laws, not only to what appears to be regulated by their express dispositions but to all the cases where a just application of them may be made, and which appears to be comprehended either within the consequences that may be gathered from it”*

*Maxwell on interpretation of statutes, Eleventh Edition contains a statement at p. 350 that “where an Act confers a jurisdiction, it may impliedly also grant the power of doing all such acts, or employing such means, as are essentially necessary to its execution. Cui Jurisdictio data est, ea quoque consessa esse videntur, sine quibus jurisdictionem explicari non potuit.” An instance is given based on Ex Parte, Martin, (1879) 4 QBD 212 at p. 491 that “where an inferior Court is empowered to grant an injunction, the power of punishing disobedience to it by commitment is impliedly conveyed by the enactment, for the power would be useless if it could not be enforced.”*



**36.** Coming back to the Goa Daman and Diu Mamlatdar's Courts Act 1966, the power given to the Mamlatdar are found in paragraph 4. Sub Section (1) deals with the aspect that every Mamlatdar shall preside over the Court which shall be a Court as Mamlatdar's Court and which shall subject to provisions of Section 5 and 24 have powers within such territorial limits as may, from time to time be fixed by Government vide notification in the Official Gazette. Clause (a) to (g) of sub-section 1 of Section 4 gives specific powers to the Mamlatdar. It includes the powers as mentioned in clause (f) and reads thus “ *to restore or cause to be restored any right of way which has been obstructed or encroached upon otherwise then under due authority of law*”.

**37.** Subsection 2 of section 4 reads thus

*“(2) The said Court shall also, have 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 sub-section (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”*

**38.** The above provision clearly goes to show that the Mamlatdar Court is having power within his limits to grant or issue injunction to such person who is found 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.

**39.** Thus, powers under Section 4(2) are very much available to

grant injunction against the person who is found erecting or attempting to erect or causing or attempting to cause. These wordings clearly goes to show that when a plaint is filed for restraining other from attempting or causing any obstruction or disturbance, injunction could be granted. Wide discretionary/powers are given to the Mamlatdar to grant such injunctions thereby restraining other side from directing or attempting to erect such impediment or causing or attempting to cause disturbance or obstruction. It thus, clearly imply that even if a plaint is filed claiming that the opponent is attempting to obstruct the traditional way or natural or customary flow, such attempt could be restrained by issuing the orders.

**40.** Section 11 of the Mamlatdar's Court Act clearly defines that there is power with the Mamlatdar to reject the plaint. Similarly, Section 13 deals with procedure where plaint is admissible. Section 14 gives powers to the Mamlatdar to keep the witnesses in attendance by issuing summons. Section 15 deals with the powers of the Mamlatdar when the plaintiff failed to attend the proceedings or failed to produce documents. Sub-Section 2 of Section 15 even gives the powers to Mamlatdar to proceed ex-parte against the defendant in case he fails to attend in spite of

service of notice. The proviso further gives powers to the Mamlatdar to set aside an ex-parte order, if sufficient cause is shown by the defendant for not attending the proceedings.

**41.** Section 18 of the said act deals with procedure and powers of Mamlatdar Court. Section 19 deals with the order of the Mamlatdar which requires to be endorsed on the plaint and to be read out in the open Court. Thus, the statutory power conferred upon the Mamlatdar under Section 4 (2) of the said act is to grant injunction thereby restraining the defendants from obstructing the right of way, traditional access, etc. No doubt such power is granted to the Mamlatdar on conducting an enquiry and after recording evidence. However, the wording as quoted above of section 4 (2) clearly implied in it vast powers event to prevent an attempt to obstruct or cause disturbance.

**42.** As observed by the Apex Court in the case of *Sakiri Vasu(supra)* and in the case of *Dr.Ashok Bhawaskar(supra)*, by the Division Bench of this Court, when the statutory authority/quasi-judicial authority is having the power to grant final relief, implies in it the grant of ancillary or interim relief. The purpose of such power is to effectively implement such powers in order to do justice. It is not necessary that the statute must mention

about grant of every power including the power of grant interim relief. There is no express prohibition regarding grant of interim relief in the Act.

43. In the case of *Sandip(supra)* and in the case of *Tulsidas(supra)*, the decisions of the Apex Court as discussed above as well as the decision of the Division Bench of this Court in the case of *Dr Ashok Bhawaskar (supra)* were not brought to the notice of the learned Single Judges. Thus, the decisions in the case of *Tulsidas(supra)* and *Sandip(supra)*, are required to be considered as *per incuriam* and cannot be considered as the law laid down, specifically considering the decision of the Supreme Court in the case of *Sakiri Vasu(supra)*.

44. With these observations and the fact that the learned Additional Collector while passing impugned order dated 27.12.2023 only relied upon the case of *Sandip(supra)* and *Tulsidas(supra)*, such decision of Additional Collector needs to be quashed and set aside.

45. The proper course is to remand the matter to the Additional Collector to decide the appeal on merits, since the impugned order is passed only on the aspect of powers of the Mamlatdar to grant interim relief. The learned Additional Collector could be,

therefore, directed to decide the appeal on merits.

**46.** Considering the above decisions and the fact that Mamlatdar is having powers to grant interim relief, impugned order dated 27.12.2023 in Appeal No.1 of 2023 passed by the Additional Collector III South-Goa, Ponda, Goa is hereby quashed and set aside. The appeal is restored to the file of Additional Collector III with directions to decide such appeal on merits.

**47.** Rule is made absolute in above terms

**BHARAT P. DESHPANDE, J.**