

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 9309 of 2021**

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NARSHIBHAI DIYALBHAI KALATHIYA

Versus

DEPUTY COLLECTOR, BOTAD

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Appearance:

MS MEGHA JANI(1028) for the Petitioner(s) No. 1

MR.AKASH CHHAYA, AGP (1) for the Respondent(s) No.1,2

MR SUDHIR M MEHTA(2058) for the Respondent(s) No. 3

MS SHAILEE S MEHTA(5873) for the Respondent(s) No. 3

NOTICE SERVED BY DS(5) for the Respondent(s) No. 4

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CORAM:HONOURABLE MR. JUSTICE NIRZAR S. DESAI**Date : 13/01/2022****ORAL ORDER**

1. Heard learned advocate Mr.Meet Pansuriya for learned advocate Ms.Megha Jani for the petitioner, learned advocate Mr.Sudhir Mehta for respondent no.3 and learned AGP Mr.Akash Chhaya for respondent nos.1 and 2.

2. By way of this petition, the petitioner has challenged the order dated 31.03.2021 passed by Deputy Collector, Botad in Revision Application No.1 of 2021.

3. Learned advocate Mr.Pansuriya for the petitioner

submitted that the application preferred by respondent no.3 in this petition before Mamlatdar, Botad, was not in consonance with provisions of Section 5(3) of the Mamlatdars' Courts Act, 1906, as the petitioner had not mentioned the date on which the cause of action has arisen.

4. Learned advocate Mr.Pansuriya submits that once the Mamlatdar after giving cogent reasons has dismissed the application preferred by the petitioner which was registered as Mamlatdar Court Case No.1 of 2020 vide order dated 06.10.2020, the Deputy Collector, Botad, quashed the aforesaid order by order dated 31.03.2021 in Revision Application No.1 of 2021 by relying upon the submission of the present respondent no.3 that there is an alternative way.

5. Learned advocate Mr.Pansuriya submitted that as such there is no road passing through the field of the petitioner as claimed by the respondent no.3 as the respondent no.3 is cultivating the land ever since he

purchased the land in the year 1978.

6. He further submitted that the present respondent no.3 is having an alternative way and the Mamlatdar though was required to make an inquiry about whether there was an existence of any road but instead of doing that, the Mamlatdar has decided altogether a different issue about the stream of the water body.

7. Learned advocate Mr.Pansuriya further submitted that even while passing the order against the present petitioner, the Deputy Collector has not taken into consideration the fact that the suit was preferred by the petitioner without mentioning a specific date on which the cause of action had taken place. He further submitted that as no date was specified about the date on which the cause of action arose, in view of judgment of this Court passed in Special Civil Application No.7850 of 2012 in case of ***Badi Husenbhai Alibhai v. Deputy Collector*** reported in ***2018 SCC OnLine Guj 3496***, wherein

the learned Single Judge of this Court has taken a view that as the specific date in respect of cause of action was not mentioned, it was the duty of the Mamlatdar to record the statement of the plaintiff under Section 9 of the Act to ascertain the exact date of cause of action to ascertain whether the suit is barred by limitation or not, however, the same was not done by the Mamlatdar.

8. Learned advocate Mr.Pansuriya also drew the attention of this Court to the fact that while deciding the application which was numbered as Mamlatdar Court Case No.1 of 2020, learned Mamlatdar, Botad, has not framed any issues.

9. On the strength of aforesaid submissions, learned advocate Mr.Pansuriya submitted that as the learned Deputy Collector has failed to appreciate the aforesaid two vital aspects, the order passed by the learned Deputy Collector dated 31.03.2021 in Mamlatdar Court in Revision BTD 1/2021 is bad as per the law and hence, the same is required to be

quashed and set aside.

10. As against that learned advocate Mr.Sudhir Mehta for respondent no.3 who preferred the suit under the provisions of the Mamlatdars' Courts Act, respondent no.3 herein submitted that the land owned by the present petitioner was actually a grazing land and without prior permission from the competent authority, the said land was purchased by the present petitioner actually as per the revenue record, there exist a public road ever-since 1939 from the time of princely state. The aforesaid facts were taken into consideration by the Deputy Collector and as the petitioner has purchased the land in question contrary to the provisions of law and coupled with the fact that even as per the revenue record as observed by the Mamlatdar, there is an existence of public road, the order passed by the Deputy Collector, Botad, is absolutely just, legal and proper.

11. Learned advocate Mr.Mehta further submitted that

the order dated 06.10.2020 passed by the Mamlatdar in Mamlatdars Court Act registered case No.1 of 2020, the Mamlatdar had passed the order in favour of the present petitioner. The aforesaid order was challenged by the present respondent no.3 by way of Revision Application before the Deputy Collector. Hence, once the Mamlatdar has passed the order in favour of the present petitioner, no prejudice has caused to the petitioner because of the fact that no specific date was mentioned in the plaint in respect of when the cause of action had arisen.

12. Learned advocate Mr.Mehta further submitted that the Co-ordinate bench of this Court has taken a view vide oral judgment dated 10.12.2014 in Civil Revision Application No.198 of 2013 that even if a specific date is not mentioned in the plaint, interference can be drawn from the plaint about the date on which or the period during which the cause of action has arisen and what is required to be seen is whether the suit was filed beyond the period of

limitation or not.

13. Learned advocate Mr.Mehta further relies upon the order dated 08.07.2015 passed by learned Single Judge of this Court in case of ***Khemabhai Bhikhabhai Kanbi v. Deputy Collector and others*** passed in Civil Revision Application No.286 of 2013 and by relying on para 6 of the aforesaid order submitted that it is the duty of Mamlatdar to act in accordance with the provisions of Section 9 of the Mamlatdars' Courts Act, even if the plaint lack certain details, in case if there is any failure on the part of the Mamlatdar to fulfill any obligation cast upon him by the Act, such failure on the part of the Mamlatdar may not be viewed in such a manner that it may make the applicant to suffer.

14. In view of the aforesaid submissions, learned advocate Mr.Mehta submitted that what has been considered by the Deputy Collector while passing the order by way of the present petition was the merit of the matter whereby, even as per the

revenue record, a public road was passing through the aforesaid land since 1939 from the time of princely State. The Deputy Collector has while passing the impugned order dated 31.03.2020 has categorically observed in para 4.5 that the present petitioner has closed the aforesaid road by cultivating the land in question. This glaring act i.e. the act of the present petitioner of closing the road cannot be overlooked.

15. It is true that while deciding the application before the Mamlatdar in Mamlatdar's Court Case, the Mamlatdar has not framed any issues and the application preferred by the petitioner also does not bare any specific date on which any cause of action has taken place, however, in view of divergent views taken by this Court in respect of issue of limitation as well as on the issue of when cause of action can be said to have been arisen and it's ultimately the failure of Mamlatdar to cast his duty as per Section 9 of the Act, the issue requires consideration. However, as even as per the revenue record the

existence of road is proved and even as per the observation made in para 4.5 of the order passed by Deputy Collector, Botad, dated 31.03.2021, wherein, there is a categorical finding that the road has been blocked by the present petitioner by cultivating the field, the interim relief is refused.

16. Hence, issue **RULE** returnable on 07.11.2022.

Learned AGP Mr.Akash Chhaya waives service of Rule on behalf of respondent nos.1 and 2 and learned advocate Mr.Sudhir Mehta waives service of Rule on behalf of respondent no.3.

Direct service qua respondent no.4 is permitted.

ANKIT SHAH

(NIRZAR S. DESAI,J)