IN THE HIGH COURT OF JUDICATURE AT BOMBAY BENCH AT AURANGABAD

945 WRIT PETITION NO. 558 OF 2016

APPASAHEB VINAYAK MALI AND OTHERS
VERSUS
THE ADDITIONAL DISTRICT COLLECTOR OSMANABAD AND OTHERS

Shri. Manoj U. Shelke, Advocate, for petitioners.

Shri. S.R. Yadav, Assistant Government Pleader, for respondent Nos.1 to 3.

Shri. S.A. Wakure, Advocate, for respondent No.4.

CORAM: T.V. NALAWADE, J.

DATE : 22 SEPTEMBER 2016

ORDER:

1) The petition is filed to challenge the decisions given by the Tahsildar and the Collector. The Tahsildar gave decision on 29-10-2015 in Rasta Case though under different provision like section 143 of the Maharashtra Land Revenue Code the order is made by the Tahsildar. Prior to that, order was made by the learned Additional Collector on 31-10-2012 in appeal filed against the order made by the Tahsildar in the past. By the said order the

Collector had remanded the matter back to the Tahsildar and then the Tahsildar gave decision dated 29-10-2015. As there was the decision of the Tahsildar on the basis of remand of the matter, it was open to the petitioner to challenge the order of the Additional Collector which was passed on 31-10-2012. When the order made by the Tahsildar is appealable before the appellate authority like Sub Divisional Officer, writ petition could not have been entertained. In the petition itself the petitioner has mentioned that he had already filed appeal before the Sub Divisional Officer.

2) Today, learned counsel for the respondent No.4 produced copy of order made by the Sub Divisional Officer in the appeal and it shows that on 16-8-2016 the appeal came to be dismissed and the order made by the Tahsildar dated 29-10-2015 came to be confirmed. Thus, at present there is separate decision of the appellate authority which needs to be challenged and nothing remains in the writ petition.

3) Learned counsel for the petitioners placed reliance on the case reported as **2012(1) Mh.L.J. 795** (Bombay High Court) (**Krushna v. Additional Commissioner, Nagpur Division**). In this case, this Court has observed that the application made under section 143 of the Maharashtra Land Revenue Code cannot be treated as a suit filed under section 5 of the Mamlatdars’ Courts Act. There is no dispute over the proposition. There is no need to consider the merits of this contention in view of aforesaid circumstances. This point will be open to the present petitioners to agitate in appropriate proceeding before appropriate forum. The petition is disposed of as it has become infructuous. Learned counsel for the petitioners requests for protection for some time. The request is rejected.

Sd/-
(T.V. NALAWADE, J.)

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