

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

38 WRIT PETITION NO. 10930 OF 2016
WITH WP/3832/2016

LAXMAN SHANKAR TAMBE AND OTHERS
VERSUS
DADA KASHINATH TAMBE AND OTHERS

Shri. Sanket S. Kulkarni, Advocate, for petitioners.

Shri. Rahul Tambe, Advocate, for respondents.

CORAM: T.V. NALAWADE, J.

DATE : 19 DECEMBER 2016

ORDER:

1) The first proceeding (Writ Petition No.10930 of 2016) is filed to challenge the order made by the Sub Divisional Officer Shirdi, District Ahmednagar by which the Sub Divisional Officer has dismissed the revision petition filed by the present petitioners to challenge the order made by the Mamlatdar under the provisions of the Mamlatdars' Courts Act, 1906. The other proceeding is filed to challenge the interim order made by the same Sub Divisional Officer. Both th sides are heard.

2) The learned Mamlatdar has made the impugned order in favour of present respondent, original plaintiff. As per the order of the Mamlatdar the original plaintiff from the proceeding will be entitled to use some portion situated adjacent to land Gat No.497 as way for going to their own land like land Gat No.512. Direction is also given by the Mamlatdar to remove the obstructions created by the defendants on this way. The Sub Divisional Officer has dismissed the revision filed against the said order.

3) Learned counsel for the petitioners submitted that the Sub Divisional Officer had no jurisdiction to entertain the revision. He took this Court through the provision of Section 23 of the aforesaid Act and the interpretation of the provision made by this Court (Nagpur Bench) in the case reported as **2015(1) Mh.L.J. 282 (Bija vs. Kisan)**. He also placed reliance on the observations made by this Court in **Writ Petition No.4609 of 2015** (Nagpur Bench) (Narayan Bholankar v. Dattatraya Tayade) and **Writ Petition No.8368/2012** (Aurangabad Bench) (Jaimin Ramji Maheshwari v. Laxman Damodhar

Kulthe). He submitted that as the order made by the learned Sub Divisional Officer is itself illegal, without jurisdiction, the order needs to be set aside and opportunity needs to be given to the present petitioners to file appropriate proceedings before the competent authority created under section 23 of the aforesaid Act.

4) The submissions made by both the sides show that both the sides have approached Civil Court and the basic order made by the Mamlatdar is challenged. Provision of section 22 shows that the order made by the Mamlatdar is always subject to the decision of Civil Court. In view of these circumstances this Court holds that there is no need to go into merits of the contentions made by the petitioners with regard to the jurisdiction of the Sub Divisional Officer.

5) It appears that in the second proceeding as per the directions given by this Court respondents/plaintiffs have deposited amount of Rs.25,000/- in this Court. For getting right of way at the time of harvesting the crops there was possibility of causing damage to the crop of the

defendants and so this Court had directed to deposit Rs.25,000/-. In view of the fact that both the sides have now approached the Civil Court the amount deposited by the present respondents needs to be sent to the Civil Court and the said amount can be considered in the suit if the claim of compensation is made by the land owner. With these observations both the petitions are disposed of. It is made clear that this Court has not granted any kind of stay in the present matter.

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

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