

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

WRIT PETITION NO. 599 OF 2016

1. Bhima Shankar Tambe,
Age 66 years, Occupation Agriculture,
R/o Lakhmapuri, Tal. Shevgaon
Dist. Ahmednagar.

2. Damu Shankar Tambe
Deceased through his Legal heir
Navnath Damu Tambe,
Age 30 years, Occupation Agriculture,
R/o Lakhmapuri, Tal. Shevgaon
Dist. Ahmednagar.

...Petitioners

VERSUS

1. The Sub Divisional Officer,
Pathardi, Dist. Ahmednagar.
2. The Tahsildar,
Shevgaon Tal. Shevgaon Dist.
Ahmednagar.
3. Navnath Kundalik Dahiphale,
Age. years, Occupation Agriculture,
R/o Lakhmapuri, Tal. Shevgaon Dist.
Ahmednagar.

...Respondents

Mr. Dhananjay Mane, Advocate holding for Mr. P. A. Bharat,
Advocate for for petitioners.

Mr. P. N. Kutti, AGP for respondents No.1 and 2.

Respondent No.3 served.

CORAM : SUNIL P. DESHMUKH, J.

DATE : 1st SEPTEMBER, 2017

ORAL JUDGMENT :

1. Learned counsel Mr. Khande states that, Mr. S. B. Tare, who had earlier been appearing for respondent No.3, before second notice for final disposal had been issued and served on respondent No.3, has been selected for appointment in judiciary. It is also being further referred to that after second time respondent No.3 has been served, he had not given any instructions to Mr. Tare. Thus, he requests, Mr. Tare may be discharged from appearance. It appears after notice on second occasion has been served on respondent No.3, he has not engaged Mr. Tare. In view of aforesaid, request of Mr. Khande to remove name of Mr. Tare as advocate for respondent No.3 appears to be legitimate. As such the name of Mr. Tare be removed as appearing for respondent No.3 in writ petition.

2. Rule. Rule made returnable forthwith and heard learned advocates for the appearing parties finally, by consent.

3. The contention on behalf of petitioner advanced by Mr. Dhananjay Mane, Advocate is that application filed by respondent No.3 before Tahsildar does not qualify to be an application pursuant to Section 5 of Mamlatdar Courts Act, 1906. He purports to contend that the application does not qualify to be a plaint for a suit under Mamlatdar Courts Act, 1906 and all other procedural requirements are not complied with. He further purports to refer to that no notice with regard to any *panchanama* had been given neither the same can be said to have been carried out by properly visiting the site as contemplated in Mamlatdar Courts Act. He, therefore, submits that in first place order passed by Tahsildar is without jurisdiction and cannot be maintained as the whole proceeding cannot be said to be a proceeding under Section 5 of Mamlatdar Courts Act. He submits that, in view of decision rendered by this court reported in *2015(1) Mh.L.J.* in the case of *Bija Maroti Hatwar Vs. Kisan Chirkut Padole and another*, the authority which had decided revision had no jurisdiction to deal with the revision preferred by the petitioner. He, therefore, urges to remit the matter preferably to Tahsildar rather than the revisional authority having regard to the facts and circumstances of the case.

4. All aforesaid contentions on behalf of the petitioner go uncontroverted for absence of appearance on behalf of respondent No.3. Though learned AGP submits that the matter may be sent back to revisional authority pursuant to the decision of the relied on, looking at the contentions going uncontroverted and particularly having regard to the one that documents which have been placed on record along with the affidavit in reply on behalf of respondents No.1 and 2 which are contended not to qualify to be proper documents on the submissions as advanced, the request on behalf of petitioner does not appear to be unreasonable. In the circumstances, it may be appropriate to refer the matter back to Mamlatdar/ Tahsildar for reconsideration of the application along with resistance thereto on behalf of the petitioner. All points would be open to be canvassed for parties concerned.

5. Impugned order dated 8-11-2011 passed by Tahsildar in Road Case No.86/2011 and one dated 4-9-2015 passed by Sub-Divisional Officer, Pathardi in revision application No.136/2012 are set aside. The application filed by present respondent stands restored for reconsideration afresh, giving opportunity to the parties concerned. All the points are kept open for the contesting

parties to be agitated before Tahsildar. Thus, writ petition allowed as aforesaid. Writ petition stands disposed of.

(SUNIL P. DESHMUKH, J.)

vjg/-