

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

922 WRIT PETITION NO.2238 OF 2018

PRABHAKARRAO VENKAT DESHMUKH AND ANOTHER
VERSUS
THE SUB DIVISIONAL OFFICER NANDED AND OTHERS

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Advocate for Petitioners : Mr. Mandlik Pratap P.
AGP for Respondents No. 1 & 2 : Mr. S.K. Tambe.
Advocate for Respondent No. 3 : Mr. Narwadkar Mrigesh D.

CORAM : P. R. BORA, J .

DATE : 26/07/2019

PER COURT :

1. The present petition is heard finally with consent of learned counsel appearing for the parties.

2. The application filed by the present respondent to the Tahsildar Kandhar admittedly under section 243 of the Maharashtra Land Revenue Code has been treated as a suit filed under section 5 of the Mamlatdars' Courts Act and the decision impugned in the present petition has been rendered. In view of the decision of this Court in case of *Krishna Damaji Choudhari Vs. Additional Commissioner, Nagpur, reported in 2012(1) Mh.L.J.* such course was wholly impermissible. In the circumstances, the impugned order cannot be sustained. If the Tahsildar was intending to consider the request made

by the respondent in a suit, as if, a suit is filed under section 5 of the Mamlatdar's Court Act, then he was under an obligation to follow the procedure laid down under sections 5 onwards of the said Act. In the above circumstances, following order is passed.

ORDER

1. Order impugned in the present petition is set aside.
2. The matter is remitted to Tahsildar Kandhar for deciding it afresh by following the procedure as provided under section 5 onwards in the Mamlatdars' Courts Act on its own merits and by giving due opportunity of hearing to the parties concerned.
3. Tahsildar Kandhar shall decide the matter, after appearance of parties, as expeditiously as possible, preferably within a period of six months from the date of this order.
4. Parties may appear before the Tahsildar Kandhar on 08.08.2019.
3. Writ Petition stands disposed of.

(P.R. BORA, J.)

mkd