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

***CIVIL APPELLATE JURISDICTION***

*WRIT PETITION NO.9116 OF 2019*

Sukhdeo Kashinath Sanap ..Petitioner.

V/s.

Tukaram Mahadu Sanap & Anr. ..Respondents.

Mr.Rameshwar N.Gite for the petitioner.

Mr.S.H.Kankal, AGP for respondent-State.

***CORAM : NITIN W.SAMBRE, J.***

***DATE : AUGUST 28, 2019***

**P.C. :-**

Heard rival counsel.

2. An application invoking section 5 of the Mamlatdar Courts Act, 1906 ('the Act' for short), made by the respondents came to be allowed thereby granting right of way from the agricultural land of the petitioner which order was acted upon by the Deputy Collector in exercise of powers under section 23 of the Act.

3. The Deputy Collector ordered remand of the proceedings before the Tashildar as on certain factual matrix he could notice contradictory observations in view of the evidence available on record.

4. Submissions of Mr.Gite, learned counsel for the petitioner are, in view of the evidence led, once it is established that there does not exists any road or an alternate road is also available to the respondents, the only finding that could have been recorded by the Sub-Divisional Officer was of dismissal of the claim under section 5 of the Act. He would try to rely on the spot inspection report in support of his contention.

5. Learned AGP supported the order impugned.

6. Considered rival submissions.

7. The Sub-Divisional Officer, in exercise of revisional jurisdiction under section 23 of the Act, has ordered remand having regard to the fact that the authority should re-appreciate the evidence which is looked into by the Tahsildar.

8. Pursuant to the order of remand, it will be always open for the petitioner to canvass his case that by the spot inspection, the absence of road could be inferred.

9. In the aforesaid backdrop, no infirmity could be noticed which warrants interference in exercise of the revisional jurisdiction under Article No.227 of the Constitution of India. The petition fails and hence is dismissed.

**(NITIN W.SAMBRE, J.)**