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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.2263 OF 2019**

Shri Sopan Daulatrao Pawar
and Anr.

..... Petitioners.

V/s

Shri Ramchandra Damu Ghadvaje
and Others

..... Respondents.

Mr. Girish Agrawal for the Petitioner.

Mr. Rameshwar Gite for Respondent Nos. 1 to 6.

Mr. S.H. Kankal, AGP for Respondent Nos. 7 and 8.

CORAM: NITIN W. SAMBRE, J.

DATE: 14th June, 2019

P.C.:-

1] In an appeal under Section 23 of the Mamlatdar's Courts Act, by the impugned order, the matter was remanded back to the Tahasildar for deciding the claim of the Respondents/original Applicants of right of way.

2] The case of the Petitioners is, Respondents/original Applicants are owners of the land bearing Gat Nos.256, 257, 258, 259 and 260 and they claimed right of way from the land bearing Gat No.233 in

North-South direction, which is owned by the Petitioner.

3] The said claim put-forth by the Respondents/original Applicants, after spot inspection by the Tahsildar on 04/03/2015, came to be rejected vide order dated 30/09/2015 by Tahasildar, Dindori.

4] The Respondents/original Applicants before the Mamlatdar, preferred Revision Application No.36 of 2016 under Section 23 of the Mamlatdar's Courts Act. The said Revision came to be allowed by the order impugned dated 08/05/2017, whereby the Sub-Divisional Officer, Dindori has partly allowed the said Revision. The order passed by the Tahasildar on 30/09/2015 came to be set aside and the matter was remanded to Tahasildar. As such, feeling aggrieved by the order of remand, the Petitioners/original Defendants have preferred this Petition.

5] Mr. Agrawal, the learned Counsel appearing on behalf of the Petitioners, would urge that the order of remand is not sustainable for the reason, the Mamlatdar, while refusing to grant relief in favour of the Respondents, has considered all facets of the matter

and that being so, the Sub-Divisional Officer has exceeded his jurisdiction in partly allowing the Revision. He would place reliance on the judgment in the matter of *Sou Anjali w/o. Vitthal Washim and Anr.*¹ The submissions are, the scope of Section 23 of the Mamlatdar's Courts Act is restricted to the extent of examination of legality or propriety of the order. According to him, the finding of fact cannot be gone into by the Revisional Court, unless such findings are arbitrary or perverse. He would also draw support from the judgment in the matter of *Shankar Govindrao Sarnaik & Anr. vs. Sub Divisional Officer, Washim & Ors.*², so as to claim that once the spot inspection report is part of the record, it was for the Respondents to apply before the authorities for recording evidence and cross-examination. Mr. Agrawal would invite attention of this Court to the order of Sub-Divisional Officer, so as to submit that, once findings of fact of existence of 6 to 7 feet road recorded by Tahasildar is based on spot inspection report, the order of remand for further inquiry, so as to record the statement of the owner of adjoining land bearing Gat No.234 is not justified. Mr. Agrawal would urge that in view of the aforecited judgments, the order as such, is liable to be quashed and set aside.

1 2015(6) ALL MR 694

2 2012(3)ALL MR 669

6] Mr. Gite, the learned Counsel appearing on behalf of the Respondents/original Applicants, would support the order of remand, as according to him, Sub-Divisional Officer has noticed that the Tahasildar has not recorded findings on certain aspects of the matter. According to Mr. Gite, the Sub-Divisional Officer has specifically given directions in the order of remand on the issues on which inquiry remained to be conducted and that being so, the order impugned is just and proper.

7] Considered the rival submissions.

8] The order of remand, which is impugned in the Petition, is based on shortfalls noticed by the Sub-Divisional Officer in the matter of conduct of inquiry, which appears to be one of the grounds raised by the Respondents while questioning the order of dismissal of claim under the Mamlatdar's Courts Act.

9] Though, on facts, the Tahasildar has recorded a finding that between the land bearing Gat Nos.234 and 233, there exists 6 to 7 feet road, however, the said finding is based on the narration by the

Petitioner and not that of original land owner of the land bearing Gat No.234, so also Gat No.256. The Sub-Divisional Officer has noticed the contradictions in the submissions of the Petitioners about existence of Pomegranate trees, as entry about said trees is not reflected in 7/12 extract of 2013-14, perhaps for the reason that there was no plantation of the trees, still the said fact is relied upon by the Tahasildar.

10] The Sub-Divisional Officer has also noticed that the Respondents have purchased the land bearing Gat No.256 from Manjulabai More. However, whether there existed a road or not from the land bearing Gat No.233 for entering into the land bearing Gat No.256 is also not inquired by the Tahasildar. As such, issues which are formed to be basis for passing the order of remand by the Sub-Divisional Officer, is upon noticing that the Tahasildar has failed to exercise the jurisdiction vested in him. The inquiry that was to be conducted by Mamlatdar/Tahasildar in the matter of claim under Section 5 of the Act, includes a detail inquiry and not only spot inspection report.

11] In the wake of above, claim of the Petitioners that

Respondent/Sub-Divisional Officer ought to have confined himself to the extent of examination of legality and propriety of the order impugned will be hardly of any assistance to the Petitioners.

12] As a consequence of above, there is no substance in the Petition. Petition fails and the same is dismissed.

(NITIN W. SAMBRE, J.)