

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

Writ Petition No.5783 of 2018
Dhyaneshwar Kurjekar Vs. The State of Maharashtra

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. Vishal Anand, Advocate for petitioner
Mrs. Mrunal Naik, AGP for respondents No.1 to 3.
Mr. J.J. Chandurkar, Advocate for respondents No.4 & 5.

CORAM : MANISH PITALE, J.

DATED : NOVEMBER 22, 2019

By this writ petition, the petitioner has challenged order dated 25/06/2018, passed by the Sub-Divisional Officer, while exercising powers under the Mamlatdar's Court Act No. II of 1906.

2. It is pointed out by the learned counsel for the petitioner that respondents No.4 and 5 had filed an application under Section 5 of the aforesaid Act before the respondent No.3 – Naib Tahsildar, claiming that right of way available to them was being illegally obstructed by the petitioner and that a direction was necessary to restrain the petitioner from doing so. The said application was allowed by order dated 20th January, 2014. On a challenge raised by the petitioner to the said order, the Sub-Divisional Officer set aside the order of Naib-Tahsildar by order dated 18/4/2016 and remanded the matter back to the Naib-Tahsildar.

3. On 19/12/2016, the Naib-Tahsildar allowed the application. A perusal of the order shows that before the Tahsildar, the petitioner was described as the applicant and the respondents No.4 and 5 were described as non-applicants. This was an incorrect appreciation of the facts on record because admittedly, it was the respondents No.4 and 5, who had invoked jurisdiction of the Tahsildar under Section 5 of the aforesaid Act. Be that as it may, upon the application being allowed, the Naib-Tahsildar directed the respondents No.4 and 5 not to use the aforesaid way.

4. Aggrieved by the said order, the respondents No.4 and 5 approached the Sub-Divisional Officer under Section 23 of the aforesaid Act. By the impugned order, the Sub-Divisional Officer found in favour of the respondents No.4 and 5. But, while allowing their revision, the Sub-Divisional Officer restored the order dated 20th January, 2014, passed by the Naib-Tahsildar. It appears that the Sub-Divisional Officer ignored the fact that the said order had already been set aside by the Sub-Divisional officer by order dated 18/4/2016, when the matter was remanded to the Naib-Tahsildar.

5. The manner in which the Naib-Tahsildar and the Sub-Divisional Officer have proceeded to decide the application and revision, it appears that

even the basic facts have not been appreciated in the correct perspective by the said Officers. It is strange that while respondents No. 4 and 5 had filed the application under Section 5 of the aforesaid Act, seeking relief before the Naib-Tahsildar, in order dated 19/12/2016, they were shown as non-applicants and the petitioner herein, against whom relief was sought, was shown as the applicant. It appears that due to such basic mistake, the order was passed against the respondents No.4 and 5, who had themselves sought relief under the provisions of the said Act before the Naib-Tahsildar.

6. The Sub-Divisional Officer also failed to appreciate the facts in the correct perspective and proceeded to restore an order, which had been already set aside by an earlier order of the same office. Such basic mistakes committed by the revenue officers while deciding proceedings under the provisions of the said Act creates situations where litigants have to approach this Court, which burdens the docket of this Court unnecessarily. It is also because of such casual approach of the revenue officers that a large number of matters are required to be remanded for proper adjudication. It is expected that the revenue officers hearing proceeding under the said Act apply their minds to the material produced before them, so that such mistakes are not committed.

7. In view of above, this Court finds that the impugned order is unsustainable. Accordingly, the writ petition is allowed and impugned order is set aside.

8. The matter is remanded to the respondent No.2 – Sub-Divisional officer, Chandur Railway, for fresh consideration of the revision filed by respondents No.4 and 5.

9. The parties shall appear before the respondent No.2 on **29th November, 2019.**

10. The respondent No.2 is directed to decide the revision expeditiously and in any case within a period of three months from 29/11/2019.

11. The writ petition is disposed of in above terms.

JUDGE