

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

930 WRIT PETITION NO. 4667 OF 2019

NETAJI S/O NANARAO PATIL
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioner : Mr. Deshmukh Prashant K.
AGP for Respondent Nos. 1 to 5-State : Mr. K. B. Jadhavar
Advocate for Respondent No.6 : Mr. A. P. Yenegure

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CORAM : V. K. JADHAV, J.
DATED : 04th FEBRUARY, 2020

PER COURT:-

1. By consent, heard finally at admission stage.
2. Learned counsel for the petitioner submits that the petitioner has filed the application before the Tahsildar, Omerga under Section 143 of the Maharashtra Land Revenue Code, 1966 for the right of way over the boundaries as an access to his land survey no. 279. Learned Naib Tahsildar (Revenue), Tahsil Office, Omerga, by order dated 22.05.2017, allowed the said application and granted the right of way over the boundaries of the land Survey Nos. 280/2 and 278/1. Being aggrieved by the same, respondent no.6 herein has filed an appeal before the Sub-Divisional Officer, Omerga and

the learned Sub-Divisional Officer, Omerga, by order dated 31.10.2017, remanded the matter to the Tahsildar, Omerga on certain conditions.

3. Learned counsel for the petitioner submits that after remand, the Tahsildar, Omerga, by order dated 07.07.2018, decided the application of the petitioner under Section 5 of the Mamlatdars' Courts Act, 1906 and directed the respondents, including respondent no.6, to remove the obstructions on the disputed road with the observations that the said road is in existence. Learned counsel submits that being aggrieved by the same, respondent no.6 herein has preferred an appeal under the provisions of the Mamlatdars' Courts Act, 1906 and the said appeal came to be entertained by the Additional Collector, Osmanabad and by order dated 14.12.2018, the learned Additional Collector, Osmanabad, allowed the appeal and simply quashed and set aside the order passed by the Tahsildar. Learned counsel submits that the Additional Collector, Osmanabad should have remanded the matter to the Tahsildar for deciding it under Section 143 of the Maharashtra Land Revenue Code, 1966 and not under Section 5 of the Mamlatdars' Courts Act, 1906. Learned counsel submits that no

purpose is served by simply setting aside the order passed by the Tahsildar. Learned counsel submits that because of the impugned order passed by the Additional Tahsildar, Osmanabad, the petitioner's grievances are not redressed and at present, he is remediless. Learned counsel appearing for respondent no.6 fairly accedes to this and submits that the Additional Collector, Osmanabad should have remanded the matter to the Tahsildar, Omerga for deciding it under Section 143 of the Maharashtra Land Revenue Code, 1966 as per the application filed by the petitioner. In view of the above submissions, I proceed to pass the following order:

ORDER

The Writ Petition is hereby allowed in terms of prayer clause "C" and disposed off accordingly.

(V. K. JADHAV, J.)

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