IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

921 WRIT PETITION NO.5223 OF 2020

MOHAMMAD ABDUL FAHAD KAFIL
MOHAMMAD ABDUL BASED AND OTHERS
VERSUS
ABDUL HADI SHAMSHODDIN AND ANOTHER

…
Mr.H.V.Tungar, Advocate for the petitioners.
…
CORAM : V.L.ACHLIYA,J.
DATE : 04.08.2020

P.C.

1] Heard.

2] By this Petition filed under Article 227 of the Constitution of India, the petitioners have challenged the order dated 30.06.2020 passed by the respondent no.2 i.e. Tahsildar, Beed, with contention that the order passed is *per se* illegal and contrary to law. It is the contention of the petitioners that from the order passed it is not possible to ascertain whether the order has been passed in exercise of powers under Section 5 of the Mamlatdars' Courts Act or Section 143 of the Maharashtra Land Revenue Code. It is submitted that in exercise of the powers under the Mamlatdars' Courts Act the scope of exercise of powers confines to pass

order to remove impediment / obstructions caused as provided under Section 5 of the said Act. It is submitted that access to field from land belonging other person can be claimed only under Section 143 of the Maharashtra Land Revenue Code.

3] By referring the application moved by the applicant, the panchanama and other material placed on record, learned counsel submits that the applicant has approached with the case for grant access to his field through the field of the petitioners. The Mamlatdar holds no authority under law to entertain and decide such application in exercise of powers vested under the provisions of the Mamlatdars' Courts Act, 1906. It is submitted that as the order passed is illegal and without jurisdiction and authority to pass such order, the petitioners have approached this Court for quashing the impugned order. It is submitted that even it is not clear from the order passed that order has been passed in exercise of Mamlatdars' Courts Act and therefore the petitioners cannot file revision petition under Section 23 [2] of the Mamlatdars' Courts Act.

4] Perusal of the order dated 30.06.2020 passed by the respondent no.2 reflects that the order has been passed in exercise of powers vested under Section 5 of the Mamlatdars' Courts Act, 1906. In the last paragraph of the order, the respondent no.2 has specifically mentioned that he is passing the order in exercise of the powers vested under Section 5 of the Mamlatdars' Courts Act. In that view, the petitioners have remedy to prefer revision under Section 23 [2] of the Mamlatdars' Courts Act against the impugned order.

5] In view of the position made clear that the impugned order has been passed in exercise of the powers vested under the provisions of the Mamlatdars' Courts Act, learned counsel for the petitioners requested to allow the petitioners to withdraw the petition and to file revision petition under Section 23 [2] of the Mamlatdars' Courts Act, 1906. It is submitted that the petitioners shall file revision petition within one [1] week and till then implementation of order be stayed.

6] In view of above, the petitioners are allowed to withdraw the petition with liberty to file revision petition before the competent authority. In case such revision petition is filed, then the Revisional Authorities is directed to decide the same as expeditiously as possible and preferably within three [3] months from the date of presentation of the petition. In order to enable the petitioners to approach the Revisional Authorities the effect and operation of the impugned order is stayed till 15th August, 2020, subject to condition the revision petition is filed on or before 15th August, 2020.

7] The Petition is disposed of in above terms.

[V.L.ACHLIYA]
JUDGE

DDC