

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

917 REVIEW APPLICATION (CIVIL) NO.89 OF 2021
IN WP/1108/2021

MAGAN BABURAO SONAWANE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Applicant : Mr. V. B. Patil
Advocate for the Petitioner : Mr. B. S. Deshmukh (in WP)
AGP for Respondent Nos. 1 to 3 Mr. Y. G. Gujrathi

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CORAM : MANGESH S. PATIL, J.

DATE : 27.10.2021

PER COURT :-

Heard the learned Advocate Mr. Patil for the review petitioner. He is seeking review of the judgment and order dated 24.08.2021 whereby the writ petition has been dismissed.

2. A Rasta case under Section 5(2) of the Mamlatdar's Courts Act, 1906 was decided in favour of the respondent. The petitioner challenged it before the Sub-Divisional Officer in a Revision under Section 23 (2) of the Act. The Revisional authority allowed the revision and quashed and set aside the order passed by the Mamlatdar against which, the petitioner preferred this writ petition.

3. Learned Advocate Mr. Patil for the petitioner submits that because of the judgment of this Court, all the avenues have been

closed for the petitioner. He was claiming that his right of way was obstructed by the respondent but in view of the decision in the writ petition, he has no other alternative available for asserting the right. Since the revisional authority in the impugned judgment had not given sufficient and cogent reasons and in a sense had refused to exercise the jurisdiction vested in him, the matter could have been remanded to the learned Sub-Divisional Officer for the decision afresh. That having not been done there is a formal defect which needs to be rectified by reviewing the judgment and order.

4. The learned Advocate would further submit that a Mamlatdar is empowered under Section 5(2) to grant remedy, these powers and the procedure to be followed is regulated by the subsequent provisions contained in the Act. Since it is in the nature of a suit, it is expected to record evidence and in the absence of any such procedure having been followed, the revisional authority also could have remanded the matter to the Mamlatdar for decision afresh. In any case, the petitioner is now helpless and the judgment is coming in his way even for prosecuting a substantive suit asserting his right to use the way.

5. Having considered the submissions of the learned Advocate and perusing the judgment under review, as also papers in the writ petition, irrespective of correctness of otherwise of the

judgment and order under Review, the submission that the matter ought to have been remanded either to the Mamlatdar or to the Sub-Divisional Officer, cannot be said to be a formal defect. The reasons given in the judgment and order under review demonstrate as to how the revisional authority had not considered the evidence before the Mamlatdar and the order passed by the revisional authority was illegal. Convenience or otherwise of the petitioner and the possibility of his securing any relief in future in the substantive suit, in my considered view, would not be a ground to invoke the power of review, which has its own limitations.

6. There is no merit in this application. Review Application is dismissed.

(MANGESH S. PATIL)
JUDGE

shp/-