

PMB

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3861 OF 2019**

Popat Manik Kadam

.. Petitioner

vs.

Prakash Damodar Kadam and ors.

.. Respondents

Mr. Vishwanath S. Talkute for the Petitioner.

Ms. Manisha A. Devkar for Respondent Nos.1 to 11.

CORAM : M.S.KARNIK, J.**DATE : AUGUST 18, 2021****P.C.**

Heard learned counsel for the parties.

2. The Respondent Nos.1 to 11 filed an application under Section 5 of the Mamlatdar's Courts Act, 1906 ('the said Act' for short) before the Tahsildar. The Respondent Nos.1 to 11 contended that on the eastern side of the suit field of the Petitioner is a road which was being used to approach their suit fields for long number of years. The Petitioner created obstruction in the user of the said road and accordingly the application was filed by the Respondent Nos.1 to 11 for removal of the obstruction.

3. The Tahsildar after hearing all concerned, held that there is no road on the eastern side but in fact there is a road on the

western side of the suit field of the Petitioner. The Respondent Nos.1 to 11 were granted permission to use the said road which is on the western side of the suit field of the Petitioner.

4. A revision came to be filed before the Sub-Divisional Officer (SDO) by the Petitioner against the order passed by the Tahsildar. The SDO remanded the matter back to the Tahsildar for the reasons mentioned in the impugned order.

5. Learned counsel for the Petitioner is aggrieved by the order passed by the SDO. According to him, the order passed by the Tahsildar calls for interference. He invited my attention to the application which claims that the Respondent Nos.1 to 11 have a right of way on the road which is on the eastern side of the suit field of the Petitioner. He therefore submits that the Tahsildar did not have jurisdiction then to grant a right of way on the western side road which was well beyond the jurisdiction of the Tahsildar as that was not the relief claimed in the application. He further submits that the SDO ought not to have remanded the matter back to the Tahsildar and that too in the Revision which was filed by the Petitioner against the order of the Tahsildar. According to him, the Revision ought to have been allowed as the only issue for consideration was whether the relief granted by the Tahsildar is beyond the scope of the relief prayed for in the application made by the Respondent Nos.1 to 11.

6. There is some substance in the contention of learned counsel for the Petitioner. The SDO remanded the matter back to the Tahsildar. Apart from the reasons recorded in the order of remand, the SDO has referred to the report dated 10.12.2016 of the Tahsildar which mentions about the existing road on the eastern side over which the obstruction was made. In the submission of learned counsel for the Petitioner even this report referred to by the SDO is prior to the filing of the application under Section 5 of the said Act and therefore, could not have been the basis for a remand.

7. Learned counsel for the Respondent Nos.1 to 11 submitted that they had also challenged the order of the Tahsildar by filing the Revision before the SDO. The SDO on the basis of the remand order passed in the Revision filed by the Petitioner did not entertain the said Revision and consequently opined that the Respondent Nos.1 to 11's case would be covered by the order passed in the Petitioner's Revision and it would be open for the Respondent Nos.1 to 11 to appear before the Tahsildar and make out their case. Learned counsel for the Petitioner submitted that even the Revision before the SDO was filed by the Respondent Nos.1 to 11 only after the notices were issued by this Court in the present Writ Petition. He submitted that the copy of the order dated 05.12.2018 passed by the SDO produced by Respondents appears to be doubtful. He submitted that the attempt on the part of the Respondent Nos.1 to 11 in filing the Revision Application at such a belated stage

before the SDO is mischievous and only with a view to get the benefit of the order passed by the SDO in the Petitioner's Revision which otherwise they are not entitled to.

8. Having gone through the order passed by the SDO, though the order remanding the matter back to the Tahsildar is filed in the Revision filed by the Petitioner, I do not propose to interfere with the said order in the exercise of the writ jurisdiction under Article 227 of the Constitution of India. I have gone through the order passed by the Revisional Authority. The Revisional Authority noted the report dated 10.12.2016 of Nayab Tahsildar which states that there was a road in existence on the eastern side on which the Petitioner has put up obstructions. The said Report was not considered at all by the Tahsildar apart from the other reasons in support of the remand. The controversy in the present Petition is whether there was a road in existence used by the Respondents on the eastern side of the suit field. Though belatedly, and may be after the Writ Petition is filed, nonetheless, the Respondent Nos.1 to 11 did approach the Revisional Authority by filing an independent Revision challenging the order passed by the Tahsildar. The SDO has not entertained the Revision in view of the order passed by him in the Petitioner's Revision remanding the matter back to the Tahsildar.

9. In this view of the matter, I do not propose to interfere with the impugned order, as it is open for the Tahsildar to decide the application on merits, as what has been done by the Revisional

Authority is to direct the Tahsildar to decide the Section 5 Application after taking into consideration all the documents and materials on record.

10. The Tahsildar to decide the Section 5 Application on its own merits and without being influenced by any observations made by the SDO or by me in this order.

11. Keeping all contentions open, the Writ Petition is disposed of.

(M.S.KARNIK, J.)