IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1464 OF 1997

BHASKAR TULSHIRAM BHANGALE and ANOTHER.
VERSUS
THE STATE OF MAHARASHTRA and ANOTHER
...
Ms R. S. Navandar, Advocate h/f Mr P. P. Chavan, Advocate for petitioners;
Mr K. B. Jadhavar, A.G.P. for respondent No.1

CORAM : SMT. BHARATI DANGRE, J.
DATE : 13th January, 2022

PER COURT:

1. Heard the learned counsel for the petitioners and the learned AGP for the State.

2. The proceedings arise out of a right of way, but it is not clear whether they could be classified as the one initiated under the Mamlatdars Courts Act, 1906 or under the provisions of Maharashtra Land Revenue Code, since it is noted that respondent No.2 – Tulshiram Raoji Dhande filed an application before the Tahasildar by invoking Section 143 of the Maharashtra Land Revenue Code, 1966, which provide for an enquiry into a claim by a person holding the land, to a right of way over the boundaries of other survey numbers. However, when the application is perused, the contention of Tulshiram against the

present petitioners is that the access road to his house has been blocked and in fact the proceedings ought to have been instituted under Section 5 of the Mamlatdars Courts Act. However, the application came to be rejected and being aggrieved by the said order, he approached the Additional Collector, now this time by invoking Section 23 of the Mamlatdars Court Act. The appeal came to be allowed by the Additional Collector on 12/02/1997, under which the present petitioners have been directed to remove the obstruction.

Thereafter, the present petitioners approached the Additional Revenue Commissioner, and perusal of the application reveal that it was in form of revision application filed under Section 257 of Maharashtra Land Revenue Code, against the order passed by the Additional Collector. This revision application is rejected by the Additional Revenue Commissioner on 06/03/1997, recording that this revision is filed under Section 23 of the Mamlatdars Court Act and no revision is maintainable. All the concerned authorities have clearly missed out to the conspectus of the dispute and randomly proceeded under the provision of Mamlatdars Court Act and under the Maharashtra Land Revenue Code. In fact the order passed by the Additional

Commissioner, rejecting the revision filed against the order of the Collector by the present petitioners, presuming it to be under Section 23 of the Mamlatdars Court Act, is also an erroneous order since the revision was filed under Section 257 of the Maharashtra Land Revenue Code and rightly presented against the order passed by the Collector, but the Commissioner has passed an order by entertaining the appeal presuming that appeal is filed under Section 23 of the Mamlatdars Court Act, whereas the original proceedings are initiated under Section 143 of the Maharashtra Land Revenue Code. This facts reveal that entire proceedings are filed and entertained, without having due reference to the provisions contained and focusing on the dispute arising between the parties. However. this is not the stage when the matter can be remanded back, since it can be seen that the petitioner was directed to be removed obstructions by the competent Court, long back in the year 1996, and it is presumed that order has now been implemented. The change in circumstance itself is a good ground for rejection of the petition. Writ Petition is, therefore, dismissed.

(SMT. BHARATI DANGRE, J.)

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