

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.2418 OF 2022

Ayub Abdulsab Bagwan & Ors.

... Petitioners

Versus

The State of Maharashtra & Anr.

... Respondents

...

Mr. Ram S. Shinde, Advocate for the Petitioners

Mr. S. N. Morampalle, AGP for Respondent No.1

Mr. R. R. Deshmukh, Advocate for Respondent No.2

...

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 6th October, 2022

PER COURT :-

1. This petition impugns the order dated 24-01-2022 passed by the Commissioner, thereby remanding the matter back to Tahsildar under the provisions of Mamlatdar Courts Act, 1906 (for short 'the said Act').

2. The petitioners approached the Tahsildar under Section 50 of Maharashtra Land Revenue Code, 1966 (for short 'the MLR Code') seeking removal encroachment made by respondent no.2 on their village/customary road. After conducting panchnama and visiting site, Tahsildar has allowed the proceedings and directed respondent no.2 to remove the said encroachment made by respondent no.2 on the village/cutomary road. The order of Tahsildar is challenged by

respondent no.2 before Sub-Divisional Officer, who has confirmed the order passed by Tahsildar.

3. Being aggrieved by the said order, respondent no.2 has approached this Court. The petition filed by respondent no.2 was allowed to be withdrawn, with liberty to respondent no.2 to approach before the Commissioner, as respondent no.2 wanted to approach the Commissioner. Accordingly, respondent no.2 approached before the Commissioner and Commissioner has passed the impugned order. Hence, the present petition.

4. Heard the learned Advocate for the petitioners and the learned Advocate for respondent no.2 as well as the learned Assistant Government Pleader for respondent no.1.

5. The learned Advocate for respondent no.2 raised preliminary objection as to the maintainability of present petition on the ground that, second revision is maintainable before the State Government against the order passed by the Commissioner.

6. It is clear from the order passed by Tahsildar and Sub-Divisional Officer that respondent no.2 has encroached on village/customary road, which was being used by the petitioners. In site inspection panchanam conducted by Tahsildar, encroachment of respondent no.2 on village/customary road is reflected.

7. Sub-Divisional Officer has also conducted a panchnama on 13-12-2021. At that time, it was noticed that, due to digging small canal by respondent no.2, village/customary road of the petitioners is closed. In these circumstances, the Commissioner without setting aside the orders impugned before him and without allowing the appeal has simply remanded the matter back to Tahsildar, which cannot be sustained in the facts of the present case. The Commissioner has not adverted to the rival contentions of both the parties and has not decided the matter on merits.

8. Section 50 of MLR Code gives powers to Collector to remove encroachment on public road. The respondents by filing affidavit-in-reply have averred that, Collector has delegated powers under Section 50 of MLR Code to Tahsildar. The Tahsildar therefore in the present matter has rightly exercised powers under Section 50 of MLR Code. Therefore, the Commissioner had no reason to remand the matter back to Tahsildar and he ought to have decided the matter on merits.

9. I do not agree with the submissions of the learned Advocate for the petitioners that, it is mentioned in the roznama that both the learned Advocates gave consent to remand the matter back to Tahsildar under the said Act. It itself is not a sufficient ground to remand the matter back to Tahsildar.

10. For the aforesaid facts, the impugned order cannot be sustained and the same is hereby quashed and set aside. The matter is remitted back to the Commissioner for decision on merits, in accordance with law, after hearing the parties.

11. During pendency of the matter before the Commissioner, parties shall maintain *status-quo*.

12. Parties shall appear before the Commissioner, Aurangabad on 17/10/2022. Notice in that behalf is waived.

13. The Commissioner to decide the appeal within a period of two weeks from the date of first appearance of parties.

14. The writ petition is allowed in the above terms.

[NITIN B. SURYAWANSHI, J.]

Sameer