

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 994 OF 2022

Kisan s/o Ramji Bhoyar,
Aged 79 years, Occupation – Cultivator,
R/o Sarshi (both), Tahsil – Mangarulpir,
District – Washim.

.... **PETITIONER**

VERSUS

- 1) The Sub-Divisional Officer,
Mangarulpir, District Washim.
- 2) The Tahsildar,
Mangarulpir, District Washim.
- 3) Ashok s/o Pundlik Bhoyar,
Aged 65 years, Occupation – Cultivator,
- 4) Pundlik s/o Dattu Kalapad,
Aged 59 years, Occupation – Cultivator,
- Both 3 & 4 R/o Sarshi (Both),
Tahsil – Mangarulpir, District Washim.
- 5) Ramhari s/o Deoman Bhoyar,
Aged 45 years, Occupation – Cultivator,
R/o Sarshi (Both), Tahsil – Mangarulpir,
District Washim.

.... **RESPONDENTS**

Mr. M.P. Kariya, Counsel for the petitioner,
Mr. S.M. Ukey, Addl.G.P. for respondents 1 and 2.

CORAM : ROHIT B. DEO, J.
DATED : 25th FEBRUARY, 2022

ORAL JUDGMENT :

Heard. **Rule.** With consent, the petition is heard finally.

2. The petitioner has suffered an order under Section 5 of the Mamlatdars' Courts Act, 1906 (Act) which injuncts him from restraining the right of way to the agricultural field of the plaintiff.

3. The petitioner has preferred revision under Section 23 of the Act in which an application for stay is moved.

4. By the order impugned dated 22-9-2020, the revisional Court has refused to grant stay.

5. I am not inclined to interfere with the order impugned for two reasons.

The first reason is that the order impugned is passed nearly one year five months ago and if the petitioner was serious and diligent, he could have made effort to have the revision itself finally disposed of. The second reason is that ordinarily the Court ought to be slow in granting stay to an injunctive order since the same amounts to virtually granting the final relief.

6. In fairness to the learned Counsel for the petitioner-original defendant Mr. M.P. Kariya, he has canvassed several submissions on merits. The first submission is that seeking identical relief the plaintiff in the proceedings before the Mamlatdar's Court has instituted a civil suit. However, the proceedings under the Act have been instituted much prior to the institution of the civil suit and while the decision under the Act may be subservient to the ultimate decision in the civil suit, the Mamlatdar was not precluded from entertaining the grievance. Mamlatdar Court ultimately provides a speedy remedy although the nature and contours of the enquiry may not be as elaborate or structured as in the civil Court.

The other submission is that there were two remand orders and the order impugned is contrary to the observations in the second order passed after remand. The submission is noted only as a courtesy to the counsel. No judicial order can be set aside merely on the ground that some other view was taken in the proceedings in which some fault is found by the superior Court and an order of remand is made.

The other submission is that some years ago similar relief was sought by the plaintiff against some other person. Assuming this to be so, that does not prevent the plaintiff from seeking relief against the petitioner. I note that the plaintiff is held entitled to relief by the Mamlatdar by a reasoned order.

The other submission is that no road was existing as per the Deputy Superintendent of Land Record. This has been looked into by the Mamlatdar. A spot inspection is conducted. The present petitioner, though noticed, stayed away from the spot inspection. On merits also I do not see anything wrong in the order passed by the Mamlatdar. This of course is a *prima facie* observation and the revision shall be decided on its own merits.

The final submission is that the order of the revisional court is without reasons. I note from the order impugned that the revisional Court has observed that after hearing the parties and considering the material, no case for stay is made out. In any event, assuming that the revisional Court ought to have given elaborate reasons, I am not inclined to interfere with the order impugned since I have looked into the material on record and it would not be, therefore, appropriate to remand the matter for recording reasons.

7. I see no reason to interfere in writ jurisdiction.

8. The petition is dismissed.

adgokar

JUDGE

Digitally signed by PRAFULLA
MANOHARRAO ADGOKAR
Signing Date: 02.03.2022 11:10