

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

Writ Petition No. 7672 of 2017

Ravindra @ Ravi s/o Rameshwar
Kathole, aged 36 years, Occupation
: Agriculturist, R/o Gokul Colony,
Jawahar Nagar, Akola,
Tah. & Dist. Akola.

.... Petitioner

.. Versus ..

(1) The Additional Collector, Akola
Tah. & Dist. Akola.

(2) The Naib Tahsildar, Tahsil Office,
Akola, Tah. & Dist. Akola.

(3) Jagannath Ramrao Murumkar
Aged about 50 years, Occ : Agriculturist
R/o Chachonda, Post. Guddhi,
Tah. & Dist. Akola.

(4) Vishnu Govinda Murumkar
Aged 55 years, Occ : Agriculturist
R/o Chachonda, Post. Guddhi,
Tah. & Dist. Akola.

.... Respondents

Mr. S. D. Chopde, Advocate for the petitioner
Ms. T. H. Khan, A.G.P. for respondents 1 and 2
Mr. U. J. Deshpande, Advocate for respondents 3 and 4

CORAM : ROHIT B. DEO, J.
DATED : 07-01-2022

ORAL ORDER

Rule. Rule made returnable forthwith.

2. With consent, the petition is finally heard at the admission stage.

3. The petitioner is aggrieved by concurrent orders passed under the Mamlatdars' Courts Act, 1906 (Act) whereby a restrained order is passed on the premise that the petitioner blocked the way of the contesting respondents to their field, by erecting thorn compound and digging a drain.

4. With the assistance of the learned counsel, I have scrutinized the reasons recorded concurrently and the order sheets.

5. It is more than apparent that the learned authority was not alive to the statutory scheme particularly that the application under Section 5 of the Act is to be treated and tried as a suit and the procedural aspects in the Act have to be given due consideration. I need not delve deeper since, and fairly and rightly so, this position is not in dispute.

6. I have no option but to remand the matter back to the first authority for fresh decision which shall be taken after giving an opportunity to the petitioner to file on record the written statement. I hope and trust that the first authority shall be conscious of the statutory provisions when he decides the matter afresh.

7. The parties are directed to appear before the first authority on 28-1-2022 and place on record copy of this order.
8. No separate notice need to be issued by the authority.
9. The authority shall decide the suit as early as possible, and in any event, within three months.
10. The concurrent orders are operating since the last four months and more and were not stayed by this Court. In this view of the matter, effect of the concurrent orders shall continue to operate as an interim arrangement and without prejudice to the rights of the parties, till the decision in the suit.
11. The petition is disposed of in the aforestated terms.

JUDGE

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