

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 8336/2022

(Suresh Dattuji Jawalkar Vs. Additional Collector, Wardha & ors.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. S. S. Shingne, Advocate h/f Mr. T.S. Kene, Advocate for
petitioner.

Mr. K. L. Dharmadhikari, Advocate for respondent Nos. 1 to 3.

CORAM : VINAY JOSHI, J.

DATED : 22/12/2022.

Heard.

2. The petitioner has applied to Tehsildar under Section 5 of the Mamlatdars' Courts Act for removal of obstruction in the right of way. Instead of deciding said application in terms of Section 5 of the said Act, the Tehsildar has granted new way over the boundaries in terms of Section 143 of the Maharashtra Land Revenue Code ('MLR Code') Being aggrieved, the respondents have filed appeal to the Sub Divisional Officer ('SDO') who has cancelled the order of the Tehsildar. The petitioner has filed appeal to the Additional Collector who has maintained the order of SDO which is impugned herein. It is apparent that the petitioner applied under Section 5 of the Mamlatdars' Courts Act whilst the Tehsildar has granted a new way under Section 143 of the MLR Code which is rightly rejected by the SDO, therefore it necessitates that the petitioner shall apply to Tehsildar afresh under Section 5 of the Mamlatdars' Courts Act on the same cause of

action which shall be decided in accordance with law.

3. The learned counsel appearing for the petitioner has submitted that there are standing crops in the subject property and till the decision of the Additional Collector, there was status-quo.

4. In view of that, the order passed by the Additional Collector and order passed by the Sub Divisional Officer are quashed and set aside.

5. Writ petition is disposed of with liberty to the petitioner to apply afresh to the Tehsildar under Section 5 of the Mamlatdars' Courts Act which shall be considered on its own merits in accordance with law.

6. The petitioner shall apply to the Tehsildar within two weeks from today and the party shall maintain status-quo for the period of two weeks from today.

7. Considering the limited controversy, notice to the respondent Nos. 4 to 7 are dispensed with.

(VINAY JOSHI, J.)

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