

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

**WRIT PETITION NO.708 OF 2022**

Gopal Vikram Chaudhari  
and others

.... Petitioners

Versus

Musa Maqbul Shaha

.... Respondent

.....

Mr. Manoj U. Shelke, Advocate for the Petitioners

Mr. M.C. Syed, Advocate for the Respondent

.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 26<sup>th</sup> JULY, 2023

**ORDER :**

1. The petitioners are aggrieved by the order passed by the learned District Judge-1, Aurangabad in Misc. Civil Appeal No.102 of 2019, thereby granting stay to the order passed by the Tahsildar in favour of the petitioners.

2. Petitioners filed an application before the Tahsildar seeking removal of obstruction of the respondent on the customary way. The Tahsildar has treated the said application as application under Section 143 of the Maharashtra Land Revenue Code. The Tahsildar has allowed the application after carrying out the site *panchanama*, and after hearing the

parties, directed the respondent to remove the obstruction created by him on the customary way.

3. The respondent challenged the order passed by the Tahsildar in Regular Civil Suit No.32 of 2018. Application below Exhibit-5 is filed along with the suit for stay to the order passed by the Tahsildar. The Trial Court, after hearing the parties rejected the application Exhibit-5. The respondent challenged the Trial Court's order by filing Misc. Civil Appeal No.102 of 2019, which is allowed by the Appellate Court. Hence, the present petition.

4. Heard the learned advocate for the petitioners and learned advocate for the respondent. Perused the writ petition memo, annexures thereto, impugned order and the citations relied upon by the learned advocate for the petitioners.

5. The Appellate Court has set aside the order passed by the Trial Court and granted stay to the order of the Tahsildar relying on the decision of learned Single Judge at Nagpur in *Krushna S/o Damaji Choudhari and another Vs. Additional Commissioner, Nagpur Division, Nagpur and ors.*

(Writ Petition No.5765 of 2010 decided on 12/10/2011), wherein it is held that the Tahsildar has committed error in issuing direction in removal of obstruction, while exercising powers under Section 143 of the Maharashtra Land Revenue Code and had decided it by exercising powers under Section 143. In view of ratio in *Krushna S/o Damaji Choudhari* (supra), the order passed by the Tahsildar to the extent it directs removal of obstruction created by the plaintiff/appellant cannot be sustained. The Appellate Court has held that the Trial Court has ignored this aspect and has wrongly rejected the application Exhibit-5.

6. Admittedly, by filing application, the petitioner prayed to the Tahsildar for removal of obstruction of the respondent on the customary way. The Tahsildar ought to have treated the said application under Section 5 of the Mamlatdar's Court Act, and should have decided it as such. However, the Tahsildar has wrongly exercised jurisdiction under Section 143 of the Maharashtra Land Revenue Code.

7. It is well settled that merely because wrong provision is mentioned in the order, that by itself does not render the order invalid, if the authority passing the order has power to pass such order.

8. In ***State of Karnataka Vs. Muniyalla, (1985) 1***

***Supreme Court Cases 196***, it is held:

*"But it is now well-settled that merely because an order is purported to be made under a wrong provision of law, it does not become invalid so long as there is some other provision of law under which the order could be validly made. Mere recital of a wrong provision of law does not have the effect of Invalidating an order which is otherwise within the power of the authority making it."*

9. The similar principle is reiterated in ***P.K. Palanisamy***

***Vs. N. Arumugham and another, (2009) 9 Supreme Court***

***Cases 173***, wherein it is held:

*"Only because a wrong provision was mentioned by the appellant, the same, in our opinion, by itself would not be a ground to hold that the application was not maintainable or that the order passed thereon would be a nullity. It is a well settled principle of law that mentioning of a wrong provision or non-mentioning of a provision does not invalidate an order if the court and/or statutory authority had the requisite jurisdiction therefor."*

10. In the case in hand, the Tahsildar has power under Section 5 of Mamlatdar's Court Act to pass the order of removal of obstruction created on the customary way. From the application filed by the petitioner and the procedure followed and impugned order passed by the Tahsildar, it is

clear that in fact, the Tahsildar has exercised the power under Section 5 of the Mamlatdar's Court Act, however, he has wrongly quoted Section 143 of the Maharashtra Land Revenue Code, while entertaining and deciding application of the petitioner. But that does not render the order passed by the Tahsildar as invalid or unexecutable. This settled legal position is ignored by the Appellate Court while granting stay to the order passed by the Tahsildar. On this ground alone, the impugned order cannot be sustained.

11. The Trial Court while rejecting the application Exhibit-5 has considered all the relevant aspects and has held that in the report dated 09/06/2017 filed by the Circle Inspector to the Tahsildar, it is specifically mentioned that plaintiff has blocked the road. In view of the report of Circle Inspector and order of Tahsildar, at this stage, *prima facie*, it can be held that, if injunction granted, inconvenience will be caused to the defendants, because their cart way will be blocked and they cannot cultivate their respective lands. On the other hand, if injunction is not granted no inconvenience will be caused to the plaintiff, because cart way is passing through the South boundary of plaintiff's lands.

12. The Trial Court has properly appreciated the contentions of the parties and has considered the record and is justified in rejecting the application Exhibit-5 filed by the respondent/plaintiff. It is, therefore, clear that the respondent/plaintiff has failed to make out a *prima facie* case and balance of convenience in his favour. Irreparable loss will be caused to the petitioner/defendants if interim injunction application filed by the respondent/plaintiff is allowed. The learned District Judge has ignored all these relevant aspects and has erroneously proceeded to grant stay to the order of Tahsildar, which in the facts of the present case is unsustainable. In the result, the writ petition is allowed.

13. Impugned order dated 29/10/2021 passed by the learned District Judge-1, Aurangabad in Misc. Civil Appeal No.102 of 2019 is quashed and set aside.

14. Order dated 27/03/2018 passed by the Tahsildar, Soygaon is restored.

**[ NITIN B. SURYAWANSHI ]**  
**JUDGE**

S.P. Rane