

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1523 OF 2021

SANTOSH S/O SABAJI TAMBE
VERSUS
THE SUB DIVISIONAL OFFICER AND OTHERS

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Advocate for Petitioner : Mr. S. B. Tarde
AGP for Respondents-State : Mr. P. G. Borade
Advocate for Respondent Nos.3 to 5 : Mr.M.S.Shah h/f Mr.S.P.Brahme

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CORAM : ARUN R. PEDNEKER, J.

**Date of Reserving the Order :
23/03/2023**

**Date of Pronouncing the Order :
03/04/2023**

PER COURT :

1. By the present writ petition, the petitioner is challenging the order dated 14/12/2020 passed by the Sub Divisional Officer, Shrigonda-Parner Area, Ahmednagar, in Revision application No.10 of 2020, whereby the order passed by the Mamlatdar under Section 5 of the Mamlatdar's Courts Act in Rasta Case No.82 of 2019 has been quashed and the matter is remanded back to the Mamlatdar for reconsideration.

2. The learned Advocate for the petitioner submits that the order of

remand is erroneous as the revisional authority ought to have passed a reasoned order and attempt should have been made by the revisional authority to complete the proceedings and not remand the matter. Remanding the matter has given new life to the lis. The learned Advocate for the petitioner further submits that the Mamlatdar had passed a reasoned and a detailed order and should have not been interfered with by the revisional authority. The learned Advocate for the petitioner also relies upon the Judgment passed by the Hon'ble Supreme Court in the case of *Sirajudheen vs. Zeenath and Ors.*, decided on 27/02/2023, wherein the Hon'ble Supreme Court has held that, the Appellate Court cannot adopt the soft course of remanding the matter merely because a particular evidence which ought to have been adduced but has not been adduced.

3. The learned Advocate for the petitioner also relies upon the Judgment of the Hon'ble Supreme Court reported in *Nadakerappa Since Deceased by Lrs. and Others vs. Pillamma Since Deceased by Lrs. and Others*, reported in 2022 SCC OnLine SC 387, wherein the Hon'ble Supreme Court has held that, the order of remand cannot be passed as a matter of course and an endeavour has to be made by

the Appellate Court to dispose of the case on merits and when both the sides have led oral and documentary evidence. The Appellate Court has to decide the appeal on merits instead of remanding the case to the lower court or the Tribunal.

4. In the instant case under Section 5 of the Mamlatdar's Courts Act, the Mamlatdar has to decide if there is any obstruction on the existing way and the proceedings before the Mamlatdar are in the nature of a suits. The Mamlatdar has done spot inspection, recorded statements of the panchas and also the parties. The revisional authority while remanding the matter has observed that the Mamlatdar has to take the statements of the plaintiff as well as the respondents, also the statement of the panch witnesses. He has to prepare the map and also see the village map whether any road / pathway is shown in the village map. The Mamlatdar also has to see whether there is any other road leading to the fields of the applicants.

5. The revisional authority has held that the procedure as contemplated under the Mamlatdar's Courts Act has not been followed and as such remitted the matter back for reconsideration to

the Mamlatdar to consider the application under Section 5 of the Mamlatdar's Courts Act after following the due procedure as contemplated under the Act. In view of the same, the aforesaid Judgment cited by the petitioner are not applicable to the facts in the present case. The process as contemplated under the Act being not fully complied with by the Mamlatdar, the material collected during the proceedings being defective, the order of remand cannot be interfered with. As the original application before the Mamlatdar's Court is filed in year 2018 and the proceedings before the Mamlatdar's Court being summary in nature, it would in the fitness of things that the Mamlatdar to decide the remanded the matter within a period of three months from the date of the receipt of this order.

6. The parties to appear before the Mamlatdar on 11/04/2023.

7. In view of the above, writ petition is disposed of.

(ARUN R. PEDNEKER, J.)

vj gawade/-.