

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

927 WRIT PETITION NO.12190 OF 2021

ISHWAR BHIMRAO PATIL
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for Petitioner : Mr. Patil (Borse) Paresh B.
AGP for Respondents-State : Mr.N. T. Bhagat
Advocate for Respondent Nos.3 and 4 : Mr. M. M. Joshi
...

CORAM : ARUN R. PEDNEKER, J.
DATE : 15th February, 2023

PER COURT :

1. Heard the learned Advocate for the petitioner. The petitioner filed an application under Section 5 of the Mamlatdars' Courts Act seeking removal of obstruction of the road passing through the property of the respondents. The Tahsildar by order dated 30/08/2019, allowed the Vahivat Case No.02 of 2019 and directed the removal of obstruction near the Southern bandh of Gut No.102/1 towards the East-West road to approach the Gut No.102/2.
2. Being aggrieved by the order passed by the Mamlatdar dated 30/08/2019, the aggrieved party filed an appeal before the Sub Divisional Officer, Erandol under Section 23 (2) of the Mamlatdars'

Courts Act. The Sub Divisional officer, after hearing the parties, held that the Vahivat Case was not conducted as per the provisions of the Mamlatdars' Courts Act and no witnesses were examined and that there was no opportunity of cross examination of the witnesses. In view of the same, the Sub Divisional Officer set aside the order passed by the Mamlatdar in Vahivat Case No.02 of 2019, however the Sub Divisional Officer did not remanded the matter for reconsideration although the order passed by the Mamlatdar was set aside on technical grounds.

3. The learned Advocate for the petitioner submits that the Sub Divisional Officer having set aside the order passed by the Mamlatdar on the technical ground ought to have remitted the matter back to the Mamlatdar Court, by directing to make the respondent Nos.3 and 4 as parties, they being the subsequent purchasers of the property.

4. In view of the same, the order passed by the Revisional authority is modified to the extent that the proceedings before the Tahsildar i.e. Mamlatdar bearing Vahivat Case No.02 of 2019 is restored to its file. The petitioner to add the subsequent purchaser

respondent Nos.3 and 4 as parties to the proceedings and the proceedings to be conducted afresh by the Mamlatdar.

5. The Tahsildar/Mamlatdar to decide the matter afresh after hearing all the parties. All contentions are left open. Petition stands disposed of.

(ARUN R. PEDNEKER, J.)

vj gawade/-.