

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

48 WRIT PETITION NO.6645 OF 2022

**SANDIP ASARAM LOKHANDE
VERSUS
YASHWANT HARIKRISHNARAO KULKARNI AND OTHERS**

Mr. S. S. Jadhavar, Advocate for the petitioner
Mr. Y. B. Bolkar, Advocate for the respondent No.1
Mr. S. B. Pulkundwar, AGP for the respondents/State

CORAM : KISHORE C. SANT, J.

DATE : 19th JUNE, 2023

P. C.

1. Heard the parties for sometime.
2. The petitioner has challenged the order passed by the learned Sub-Divisional Officer dated 30-03-2022 dismissing his revision application challenging the order passed by the Tahasildar, Mantha dated 04-09-2020.
3. The learned Tahasildar by way of judgment and order had allowed the application filed by the respondent under Section 5 of the Mamalatdar Court Act and held that the

respondent can use the way from Gut No.217 to Gut No. 219.

4. Learned advocate Mr. Jadhavar for the petitioner argued the petition by inviting attention to the application dated 31-12-2019 filed by the respondent.

5. On going through the application it is clear that no particulars as required for filing application under Section 5 are given. No date of cause of action is given. He submits that there is no affidavit taken of the respondents on record. He thus, submits that enquiry is not properly conducted by the learned Tahasildar.

6. Mr. Bolkar, learned Advocate for respondent No.1 vehemently opposed the petition. He submits that in the panchanama it is recorded that alleged road was very much in the use. In the panchanama it is recorded that road was in existence till well in land Gut No. 219. It is obstructed only to the extent of 70 to 80 fts. He thus, submits that both the

authorities have rightly passed the order.

7. Learned AGP also supports the order passed by the authorities.

8. On going through the application and on going through the panchamam it is clear that application was not properly filed. Tahasildar has not taken care to consider section 8 of the Mamlatdar Court Act. The Tahasildar ought to have followed the procedure. If the application was treated to be an application under Section 8, he should have ordered the procedure considering the same to be an application under section 5. Since the Tahasildar has not properly conducted enquiry this court finds that it would be appropriate in the interest of justice to remand the matter back for fresh enquiry.

9. Needless to say that Tahasildar will follow the procedure as given in sections 7 & 9 of the Mamlatdar Court Act and pass fresh orders.

10. Mr. Bolkar, advocate for respondent No.1 submits that this court by way of interim order dated 07-02-2023 had protected the interest of the respondents by directing the petitioner not to obstruct the path way which reads as below:-

‘2. In the interregnum, the petitioner not to obstruct the path way. However, direction to open any new road would remain stayed. The learned counsel for the petitioner submits that he would not obstruct the path way.’

11. Mr. Bolkar, advocate for respondent No.1 further requested to continue the said protection granted earlier by order dated 07-02-2023.

12. Parties are also permitted to file fresh application and written statements.

13. In view of the same impugned order is quashed and set aside.

14. It is expected that Tahasildar will complete the

exercise following the due procedure of the law within six months.

15. Protection granted earlier by order dated 07-02-2023 is continued till proceeding is disposed off before the Tahasildar.

16. Writ petition stands disposed off in above terms.

[KISHORE C. SANT, J.]

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