

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

923 WRIT PETITION NO.13401 OF 2018

**DILIP SUPDU PATIL
VERSUS
THE STATE OF MAHARASHTRA & OTHERS**

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Advocate for the petitioner : Mr.Paresh B.Patil h/f.
Mr.H.P.Deshmukh

AGP for Respondent-State : Mr.K.B.Jadhavar

Advocate for Respondent no.3 : Mr.P.D.Patil

Advocate for the respondent nos.4 and 5 : Mr.S.R.Patil

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CORAM : ARUN R. PEDNEKER, J.

DATE : 02.02.2023

P.C. :

1] The petitioner is challenging the impugned judgment and order dated 26.02.2018 passed by the Sub Divisional Officer, Division Chalisgaon, Chalisgaon in Vahiwat Revision No. 59 of 2017 and the impugned judgment and order dated 31.07.2017 passed by the Tahsildar, Chalisgaon in Vahiwat Case No.04 of 2016.

2] The petitioner filed an application under Section 5 of the Mamlatdar's Courts Act, 1906 for repair

and re-construction of the destroyed field minor canal of main canal No.12 of Manyad Dam Project and the said canal was in existence from the Year 1974 till 2014. The said canal was passing from Gat No.18 of the respondent no.3 to Gat No.10/A/1 of the petitioner's land for supplying water from main canal to the petitioner land.

3] Before filing the present Writ Petition, the petitioner had approached the Irrigation Department and thereafter the petitioner filed a Writ Petition before this Court for restoration of the canal. However, in view of alternate remedy available to the petitioner, the writ petition was disposed of. Thereafter, the petitioner filed above application before the Tahsildar. The Tahsildar has rejected the application filed by the petitioner and the said order was also confirmed by the Revisional Authority.

4] While issuing the notice in the present Writ Petition, this Court had directed the Irrigation Department to produce water canal map of the village. In pursuance of the direction of this Court, the advocate appearing for the

respondent nos.4 and 5 has produced the chart, which indicates that there was a water canal in existence at the point of time and that the irrigation department have been taking water charges of the same from the petitioner up to the year 2014. This particular evidence was not available before the Tahsildar, exercising the powers under Section 5 of the Mamlatdar's Courts Act, as such the matter is remitted back to the Tahsildar. The impugned order dated 26.02.2018 passed by the revisional authority and the order dated 31.07.2017 passed by the Tahsildar are set-aside. The Tahsildar to take into consideration all the relevant material including the documents, which are produced before this Court and to pass the order afresh.

5] The Tahsildar not to be influenced by observations made in this order while passing the final orders. The Tahsildar to decide the application on its own merits.

6] Pendency of the proceedings between the private parties, however, will also not come in the way of

respondent nos.4 and 5 - authorities to restore their water canal, if the water canal is in existence as per their record.

7] In view of the same, the petition stands disposed of. The Tahsildar is directed to decide the application under Section 5 of the Mamlatdar's Courts Act within a period of four months from the date of receipt of the order.

8] All issues are kept open.

[ARUN R. PEDNEKER]
JUDGE

DDC