

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 12503 OF 2022

Vitthal s/o Bhikaji Nagulakar & Anr. ... Petitioners
Versus
The Sub Divisional officer, Hingoli & Ors. ... Respondents

...
Mr. S. K. Chavan – Advocate for petitioners
Mrs. D. S. Jape – AGP for respondent/State
Mr. D. M. Shinde – Advocate for respondent nos. 3 and 4

....

CORAM : KISHORE C. SANT, J.
DATE : 31ST JULY, 2023

PER COURT :

1. Heard learned counsel appearing on behalf of the respective parties and the AGP for respondent/State.

2. Respondent nos. 3 and 4 herein had approached the learned Tahsildar, Sengaon, Dist. Hingoli, by filing an application under Section 5(2) of the Mamlatdar's Court Act, 1906, seeking removal of encroachment at the hands of the petitioners. The Tahsildar considering that the Civil Suit No. 114/2021 was filed prior in point of time rejected the said application under Section 26(b) of the said Act. The respondent nos. 3 and 4 challenged the said order of Tahsildar by filing a Revision before the Sub-Divisional Officer,

Hingoli. The Revisional Authority considered that the Tahsildar has wrongly interpreted Section 26(b) of the said Act as the Civil Suit is not prior in point of time but it is filed subsequent to the application presented before the Tahsildar and remanded the matter for fresh inquiry. The petitioners thus approached this Court challenging the order of remand.

3. Though the petitioner tried to argue the matter, this Court finds that the matter was not considered on merits by the authorities below and thus this court would not go into the merits of the matter.

4. The learned advocate for the petitioner submits that the application was not properly filed before the Mamlatdar. He further submits that the learned Sub-Divisional Officer should not have remanded the proceedings back to the Tahsildar for fresh inquiry. He also submits that the Sub-Divisional Officer has wrongly passed the order instead of straightway rejecting the revision.

5. Section 26(b) of the Mamlatdar's Court Act reads thus :

- 26. Bar of certain suits.** - No suit shall lie under this Act-
(b) in respect of [any removal of any impediment or of] any dispossession, recovery of possession or disturbance of possession,

that has been the subject of previous proceedings, to which the plaintiff or his predecessor in interest was a party, under this Act, or in a Civil Court, or under Chapter XII of the Code of Criminal Procedure, 1898.

6. Perusal of Section 26(b) quoted above makes it clear that when the previous proceeding is pending between the parties to the application, the suit shall not lie under the said Act. This Court finds that the learned Sub-Divisional Officer has rightly considered this provision and has remanded the matter back to the Tahsildar for fresh decision. This Court does not find any illegality committed by the learned Sub-Divisional Officer in passing the impugned order. In view of this position, no interference is called for. **The petition is, therefore, dismissed.**

7. Looking to the nature of the dispute, it is expected of the Mamlatdar / Tahsildar, Sengaon, Dist. Hingoli, to decide the application within a period of two (02) months from today.

8. Parties to appear before the Mamlatdar on 07th August, 2023.

[KISHORE C. SANT]
JUDGE