

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 6626 OF 2018
WITH
INTERIM APPLICATION NO.2791 OF 2020**

Balasaheb Ganpat Yadav Through His Legal
Representatives and Ors.

... Petitioners

Versus

Laxman Mahadeo Kadam and Ors.

... Respondents.

...

Ms. Manisha a. Devkar, for Petitioner.

Mrs. V. S. Nimbalkar, AGP for Respondent No.6.

...

**CORAM: SANDEEP V. MARNE, J.
DATE : 13 OCTOBER 2023.**

P. C.:

The challenge in the present petition is to order dated 26 February 2018 passed by Sub-Divisional Officer (**SDO**), Satara by which Revision Application filed by the Respondent No.1 under Section 25(2) of the Mamlatdars Court Act 1906 has been allowed and order passed by the Tehsildar on 05 July 2016 has been set aside.

2. I have heard Ms. Devkar, the learned counsel appearing for Petitioner and Mrs. Nimbalkar, the learned AGP. It appears that notices of the petition are served on Respondent Nos.1, 2 and 4 however none appears on behalf of Respondent Nos.1, 2 and 4. It appears that

Respondent No.1 has expired on 29 November 2018 and Interim Application has been filed to bring his legal heirs on record. Considering the nature of order I am proposing to pass it is not necessary to bring legal heirs of Respondent No.1 on record.

3. Perusal of the order passed by the SDO would indicate that the order of Tehsildar is set aside by recording a finding that under provisions of Section 5 of the Mamlatdars Court Act, Tehsildar is empowered only to remove an obstruction to an existing access road. That Tehsildar cannot direct creation of new road. It appears that the Petitioners filed an application before Tehsildar with a specific complaint that the access road was blocked by Respondents on 10 May 2015. It further appears that the Petitioners were seeking removal of obstruction on access road and not creation of a new road.

4. By erroneously assuming that the Petitioners were seeking opening / creation of a new road, SDO has not gone into the merits of the claim raised by the Petitioners. It is therefore necessary that the SDO examines the correctness of findings recorded by the Tehsildar in order dated 05 July 2016 with regard to availability of access road and blockage of the same by the Respondents. For that purpose the proceedings deserve to be remanded to the SDO.

5. Accordingly the Writ Petition is disposed of by setting aside order dated 26 November 2018 passed by SDO, Satara. Revision Application No.3 of 2016 shall stand restored before SDO, Satara.

Petitioner to remain present before the SDO, Satara on 30 October 2023 and communicate names of legal heirs of Respondent No.1, who is Revision Applicant before the SDO. The SDO shall proceed to issue notices to the legal heirs of Revision Applicant and thereafter proceed to decide the Revision Application. With the above directions, Writ Petition is disposed of.

SANDEEP V. MARNE, J.