

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

WRIT PETITION NO.2736 OF 2022

Anand Gulabrao Thengil & Ors.

..Petitioners

Versus

Uttam Waman Thengil & Ors.

..Respondents

Mr. Dhananjay D. Rananaware, for the Petitioners.

Mr. Rajaram V. Bansode, for the Respondent Nos.1, 2, 5b & 5c.

Mr. C. D. Mali, AGP for the Respondent No.12.

CORAM : SANDEEP V. MARNE, J.

DATE : 15th DECEMBER, 2023

PC.

1. Heard the learned counsel appearing for the parties.
2. The Tahsildar had passed an order on 31st May, 2013 directing the Petitioners to remove the obstruction on the road under the provisions of Section 5(2) of the Mamlatdars Courts Act, 1906. Petitioners preferred a Revision under the provisions of Section 23(2) of the Mamlatdars Courts Act before the Sub-Divisional Officer. However, it appears that the Sub-Divisional Officer erroneously treated the said Revision to be an Appeal under the provisions of Section 247 of the Maharashtra Land Revenue Code, 1966 and proceeded to reject the same by his order dated 2nd March, 2016.

3. When the decision of the Sub-Divisional Officer was challenged before the Additional Collector, Satara, it was observed by the Additional Collector in letter dated 18th July, 2016 addressed to the Sub-Divisional Officer that Petitioner's Revision was erroneously treated as appeal under Section 247 and accordingly, the Additional Collector remanded the proceedings before the Sub-Divisional Officer for fresh decision under the provisions of Section 23(2) of the Mamlatdars Courts Act. However, what was done on 18th July, 2016, was not to pass an order but to address a letter to the Sub-Divisional Officer. It appears that after addressing the letter dated 18th July, 2016, the Appeal preferred before the Additional Collector remained pending and ignoring the letter dated 18th July, 2016, the Additional Collector proceeded to take up the appeal and dismissed the same for default by order dated 28th November, 2016. By the time, order dated 28th November, 2016 was passed by the Additional Collector, the proceedings were already remanded by the Additional Collector to the Sub-Divisional Officer.

4. The order passed by the Additional Collector dated 28th November, 2016 is thus clearly erroneous. The Petition is accordingly disposed of by setting aside order dated 28th November, 2016 passed by the Additional Collector, Satara. As directed by letter dated 18th July, 2016 the Revision Petition filed by the Petitioners under the provisions of Section 23(2) of the Mamlatdars Courts Act shall stand restored before the Sub-Divisional Officer, Phaltan (Man-Khatav), who shall proceed to decide the same on its

own merits without being influenced any of the orders passed earlier.

5. With the above directions, the Writ Petition is disposed of.

6. All questions on merits of the case including the submission of Mr. Bansode that the road in pursuance of the order of Mamlatdar has already been constructed are left open.

[SANDEEP V. MARNE, J.]