

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.56 OF 2020

Arvind Bhimdev Bansode

...Petitioner

V/S

Santosh Vijay Taware & Ors.

...Respondents

...

Mr. Vasant G. Adsul for the Petitioner.

Mr. P.P. Pujari, AGP for Respondent Nos.4 to 7/State.

...

CORAM : SANDEEP V. MARNE, J.

DATE : OCTOBER 27, 2023.

P.C.:

1 By this Petition the Petitioner has challenged order dated 20 March 2018 passed by the Tahasildar, Baramati, allowing application filed by the Respondent No.1 under section 5 of the Mamlatdars Courts Act, 1906. Petitioner has also challenged order dated 14 November 2018 by which his revision under provisions of section 23(2) of the Mamlatdars Court Act, 1906 has been rejected.

2 I have heard the learned Counsel appearing for the Petitioner. Despite service of notice, Respondent Nos.1 to 3 have failed to remain present. The learned AGP appears on behalf of Respondent Nos.4 to 7-State.

3 Perusal of the order passed by the Tahasildar on 20 March 2018 would show that the Tahasildar has not recorded any independent reasons for directing the Petitioner to open the obstructed road. It appears that upon filing of application by Respondent No.1 on 26 February 2018, the Tahasildar proceeded to pass interim order on 3 March 2018 on the ground that both the parties had agreed for conduct of panchanama and measurement and till said panchanama could be conducted, the Petitioner was directed not to obstruct the road. Thereafter, the panchanama was conducted on 19 March 2018 by the Circle Officer. The Tahsildar has considered the panchanama. However, no specific findings are recorded as to whether the road exists or whether any obstruction is created by the Petitioner on such road. The Tahasildar has proceeded to allow the application of Respondent No.1 essentially on account of the allegation of violation of the interim order dated 3 March 2018. Perusal of the order passed by the Tahasildar would indicate that the Tahasildar has not applied his mind to the issue as to whether the road was indeed in existence and whether any obstruction was created on the same. While considering the prayer made by the Respondent No.1 about violation of interim order dated 3 March 2018, the Tahasildar appears to have decided the proceedings finally by order dated 20 March 2018. The Sub Divisional Officer unfortunately has not noticed this flaw on the part of the Tahasildar.

4 In my view, therefore the orders passed by the Tahasildar and the Sub Divisional Officer are not sustainable. The orders are required to be

set aside and the proceedings are required to be restored on the file of Tahasildar for being decided afresh.

5 The Writ Petition accordingly partly succeeds. The order dated 20 March 2018 passed by the Tahasildar and order dated 14 November 2018 passed by the Sub Divisional Officer are set aside.

6 The Rasta Case No.6 of 2018 is restored on the file of the Tahasildar, who shall grant an opportunity of hearing to all the concerned parties and decide the proceedings afresh.

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

(SANDEEP V. MARNE, J.)