

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

Writ Petition No.1671 of 2022

Dnyaneshwar S/O Rushiji Borkar

Vs

Moreshwar S/O Daulat Borkar And Others

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri S.W. Sambre, Advocate for the Petitioner/s

Ms Shamsi Haidar, AGP for the Respondent Nos.4 to 7/State

Shri S.R. Bhongade, Advocate for the respondent No.1

CORAM : ANIL S. KILOR, J.

DATED : 26.06.2023

1. Heard.

2. The present writ petition is arising out of the proceeding filed by the petitioner before the Tahsildar, Saoner, for prohibiting the respondent Nos.1 to 3 from using the petitioner's field to approach their field.

3. The petitioner is the owner of field Survey No.64(A), whereas, the respondent Nos.1 to 3 are the owners of survey No.63.

4. The title clause of the application moved by the petitioner before the Tahsildar, does not disclose under which provision the application was filed. On a specific query put to the learned counsel for the petitioner, according to him, the application was filed under Section 143 of the Maharashtra Land Revenue Code, 1966 (for short "the MLR Code"). However, after going through

the provision of Section 143 of the MLR Code, it does not give any authority or power to the Tahsildar to issue such prohibitory order, as sought by the petitioner.

5. The learned counsel for the respondent Nos.1 to 3 and the learned AGP for the respondent Nos.4 to 7 have also failed to point out any provision whereby the Tahsildar can prohibit from using approach way.

6. In the circumstances, as the order passed by the Tahsildar dated 30.06.2016 vitiates for want of jurisdiction, the subsequent order passed by the Sub Divisional Officer(SDO), Saoner dated 12.09.2017, the order passed in appeal by the Additional Collector, Nagpur, dated 06.08.2018 and the order passed by the Additional Commissioner, Nagpur in revision dated 13.08.2021, also vitiate.

7. In the circumstances, the petition fails on the above referred ground.

8. At this stage, the learned counsel for the petitioner submits that the petitioner may be permitted to avail remedy, as available under the law, by filing an appropriate proceeding before appropriate forum.

9. Accordingly, the writ petition is **dismissed** with liberty to the petitioner to file appropriate proceeding, seeking prohibitory order against the respondent Nos.1 to 3 before the appropriate forum as permissible under the law.

10. In case, the petitioner files such proceeding, needless to mention that the findings recorded by the Tahsildar, SDO, the Additional Collector and the Divisional Commissioner would not come in the way of the petitioner, as I have already held that the findings vitiate on the ground that those findings are without jurisdiction.

[ANIL S. KILOR, J.]