

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 2395 OF 2018

1. Bapurao S/o. Baliram Thakare,
Aged 68 years, Occu: Cultivator,
2. Samadhan S/o. Baliram Thakare,
Aged 65 years, Occu.: Cultivator,
Both R/o. Babapur, Tah. Karanja Lad,
District : Washim.
3. Vidyadhar S/o. Pandurang Khade,
Aged 55 years, Occu: Cultivator,
R/o. Kamargaon, Tah. Karanja Lad,
District : Washim.

.... **PETITIONERS.**

// VERSUS //

1. The Deputy Collector (Revenue),
Washim, District : Washim.
2. The Tahsildar, Karanja Lad,
District : Washim.
3. Nandu S/o. Madhukar Thakare,
Aged : Adult, Occu.: Cultivator,
R/o. Babapur, Tah. Karanja Lad,
District : Washim.

.... **RESPONDENTS.**

Shri A.P.Tathod, Advocate for Petitioners.
Shri D.P.Thakre, Addl.G.P. for Respondent Nos.1 & 2.

CORAM : ANIL S. KILOR, J.
DATED : APRIL 20, 2023.

ORAL JUDGMENT :

1. Heard.

2. **RULE.** Rule made returnable forthwith. Heard finally by consent of the learned counsel for the parties.

3. The order dated 17/03/2018 passed by Deputy Collector (Revenue), Washim, rejecting the revision application filed under Section 23(2) of the Mamalatdar's Courts Act, 1906 (hereinafter referred to as "the Act of 1906") is under challenge in this writ petition.

4. The dispute pertains to the alleged obstruction created by the petitioner in the approach way of the respondent/ original applicant.

5. The Tahsildar held in favour of the respondent No.3 and thereby directed to remove obstruction allegedly created by the petitioner in the approach way of the respondent No.3, vide order dated 08/08/2017. Feeling aggrieved by the same, the petitioner approached the Deputy Collector by way of a revision under Section 23(2) of the Act of 1906. However, because the petitioner continued to remain absent, the revision came to be rejected. Hence, this petition.

6. Shri Tathod, learned counsel for the petitioner submits that since the matter pertains to the right of approach way and the respondent

No.3 is misinterpreting the order of the Tahsildar and creating nuisance for the petitioner, it is necessary to hear the revision and decide the same. He undertakes to co-operate the Deputy Collector in deciding the revision. He further undertakes that he will attend the proceedings on every date, unless there is any such compelling circumstances which would be beyond the control of the petitioner to attend the proceedings. It is submitted that, however, one opportunity be given to the petitioner.

7. The learned A.G.P. opposed the present writ petition on the ground that more than sufficient opportunities were given to the petitioner to pursue his revision, however, he was continuously absent and accordingly the revision was dismissed.

8. Having considered the rival contentions, I am of the opinion that the petitioner shall get one opportunity, particularly in the backdrop of the fact that the petitioner is not disputing the fact of having approach way available to the respondent No.3 to his field. However, it is the case of the petitioner that the respondent No.3 is taking disadvantage of the order passed by the Tahsildar, by misinterpreting it and trying to create nuisance.

9. Thus, in light of the undertaking referred herein above, I am of the opinion that the matter needs to be remanded back to the Deputy Collector for deciding it afresh. Accordingly, I pass the following order :

- i) The writ petition is partly allowed.
- ii) The impugned order dated 17/03/2018 passed by Deputy Collector (Revenue), Washim is hereby quashed and set aside.
- iii) The matter is remanded back to the Deputy Collector for deciding the same, afresh, after hearing the parties.
- iv) The petitioner shall appear before the Deputy Collector on 28/04/2023 at 12:00 noon.

The Writ Petition is **disposed of** accordingly. No order as to costs.

JUDGE

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