

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

Writ Petition No.161 of 2022

Temeshwar S/O Vitthal Nikhade And Another
Vs
Collector, Chandrapur And Others

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

Court's or Judge's Order

Ms Shilpa Giratkar, Advocate for the Petitioner/s
Shri H.D. Dubey, AGP for the Respondent Nos.1 to 3/State

CORAM : ANIL S. KILOR, J.
DATED : 05.07.2023

1. Heard.

2. In the present petition, the petitioners are the original applicants in a proceeding filed under Section 5 of the Mamlatdar's Courts Act, 1906, raising a dispute as regards change of natural flow of canal by the respondent No.4. The Tahsildar, Warora allowed the said application vide order dated 10.01.2020 in favour of the petitioners. The said order came to be challenged before the Sub-Divisional Officer (SDO), Warora at the behest of the respondent No.4. The SDO allowed the said appeal in favour of the respondent No.4 vide order dated 26.03.2021. Hence, this petition.

3. Admittedly, a grievance raised by the petitioners before the Tahsildar, was not in respect of an obstruction to any water course or natural flow of any canal. The grievance is about change of direction of the natural flow of the canal. Therefore, at

this juncture, it would be relevant to refer to Section 5(1)(a)&(b) of the Mamlatdars' Courts Act, 1906, which reads thus:

“5(1) Every Mamlatdar shall preside over a Court, which shall be called a Mamlatdar's Court, and which shall, subject to the provisions of sections 6 and 26, have power, within such territorial limits as may from time to time be [fixed by the State Government,-

(a) to remove or cause to be removed any impediment, erected otherwise than under due authority of law, to the natural flow in a defined channel or otherwise of any surface water naturally rising in or falling on any land used for agriculture, grazing, trees or crops, on to any adjacent land, where such impediment causes or is likely to cause damage to the land used for such purpose or to any such grazing, trees or crops thereon;

(b) to give immediate possession] of any lands or premises used for agriculture or grazing, or trees, or crops, or fisheries, or to restore the use of water from any well, tank, canal or water-course, whether natural or artificial used for agricultural purposes to any person who has been dispossessed or deprived thereof otherwise than by due course of law, or who has become entitled to the possession or restoration thereof by reason of the determination of any tenancy or other right of any other person, not being a person who has been a former owner or part-owner, within a period of twelve years before the institution of the suit of the property or use claimed, or who is the legal representative of such former owner or part-owner:

Provided that, if in any case the Mamlatdar considers it inequitable or unduly harsh [to remove or cause to be removed any such impediment or], to give possession of any such property or to restore any such use to a person who has become entitled thereto merely by reason of the determination of any such tenancy or other right, or if it appears to him that such case can be more suitably dealt with by a Civil Court, he may in his discretion refuse to exercise the power aforesaid, but shall record in writing his reasons for such refusal.”

4. From the language of Section 5 of the Mamlatdars' Courts Act, 1906, it is evident that the application under Section 5 of the Mamlatdars' Courts Act, 1906 is not applicable to the cases like the present one for restoration of natural course of canal, which alleged to have changed and not obstructed.

5. In the circumstances, I have no hesitation to hold that the order passed by the Tahsildar, Warora, is without jurisdiction and resultantly, the order of the SDO, Warora impugned also vitiates. Hence, I do not find any merits in the present writ petition and accordingly, it is **dismissed**.

6. However, the petitioners are at liberty to avail other remedies, as available under the law.

[ANIL S. KILOR, J.]