

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

WRIT PETITION NO.6393 OF 2022

(AMOL RAJENDRA PAKHARKAR..VS.. DEPUTY COLLECTOR, MURTIZAPUR-BARSHITAKALI &
OTH.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri A.M.Tirukh, Advocate for the Petitioner.
Shri D.P.Thakre, Addl. G.P. for Respondent Nos.1 to 4.
Ms Seema P.Dhotre, Advocate for Respondent No.5 (Appointed)

CORAM : ANIL S. KILOR, J.
DATED : JULY 31, 2023.

1. Heard.

2. The order dated 28/01/2022 passed by Mamalatdar directing the petitioner to remove obstruction in the approach way of the respondent No.5 and upholding of the same by the Deputy Collector vide order dated 12/08/2022 has gave cause to the petitioner to file the instant petition.

3. In the matter at hand, earlier on two occasions similar prayer was rejected by the authorities below and this was the third successive application moved by the respondent No.5. Earlier, the Mamalatdar vide order dated 09/06/2015 directed the petitioner to remove the alleged obstruction in the way of the respondent No.5. The said order was set aside by the Additional Collector in revision and the same was never challenged by the respondent No.5 and therefore, it had attained finality.

4. Thereafter, the Tahsildar again on 17/01/2019 passed an order rejecting the prayer of the respondent No.5.

5. It appears from the record that after the order was passed on 17/01/2019 a fresh application was moved and from the language of the said application it appears that the prayer of the respondent No.5 was to grant approach way to his field under Section 143 of the Maharashtra Land Revenue Code, 1966. However, the Tahsildar has entertained the application under Section 5 of the Mamalatdars' Courts Act, 1906 and passed the impugned order dated 20/01/2022. It is evident that the Tahsildar has relied upon the order of the Tahsildar which was set aside by the Additional Collector. Moreover, the Tahsildar has wrongly considered the application under Section 5 of the Mamalatdars' Courts Act, 1906, particularly when the application shows that the relief sought by the respondent No.5 was under Section 143 of the Maharashtra Land Revenue Code, 1966.

6. In the circumstances, I am of the opinion that the matter needs to be remanded back to the Tahsildar to decide the application afresh under Section 143 of the Maharashtra Land Revenue Code, 1966, after granting hearing and sufficient opportunity to both the parties. Accordingly, I pass the following order:

- i) The Writ Petition is partly allowed.

- ii) The impugned order dated 12/08/2022 passed by respondent No.1-Deputy Collector and the impugned order dated 28/01/2022 passed by respondent No.2-Tahsildar, Barshitakli are hereby quashed and set aside.
- iii) The matter is remanded back to the respondent No.2-Tahsildar, Barshitakli, to decide the application filed by respondent No.5, afresh, after seeking necessary compliance if any as per the provisions of Section 143 of the Maharashtra Land Revenue Code, 1966 and after hearing and giving sufficient opportunity to both the parties.
- iv) Both the parties shall appear before the Tahsildar, Barshitakli on 18/08/2023 at 11:00 a.m.

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

Fees of the Advocate appointed to represent the respondent No.5 be quantified as per the Rules.