

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

WRIT PETITION NO. 6610 OF 2018

Shri Ramkrushna Bhaurao Katole,
Aged about __ years, Occu : Agriculturist,
R/o. Palsod, Tq. Akot, Dist. Akola, through
his Power of Attorney Holder Shrikrushna
Bhaurao Katole, R/o. Maroda, Tq. Akot,
Dist. Akola.

.... **PETITIONER**

// VERSUS //

1. Shri Praful Mahadeorao Aarole,
Aged 39 years, Occu. Agriculturist,
R/o. Palsod, Tq. Akot, Dist. Akola.
2. Additional Collector, Akola
Collectorate Compound, Akola.
3. Sub-Divisional Officer, Akot,
Tahsil Office, Akot, Dist. Akola.

.... **RESPONDENTS.**

Shri Vipul B. Bhise, Advocate for Petitioner.
Shri S.A.Mohta, Advocate for Respondent No.1.

CORAM : ANIL S. KILOR, J.
DATED : JUNE 14, 2023.

ORAL JUDGMENT :

1. Leave to correct the cause title is granted. The correction be carried out forthwith.

2. Heard.

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

4. In the present matter, the respondent No.1 moved an application before the Tahsildar for removal of obstruction in the approach way to his field from the petitioner's field. From the wordings of the said application and particularly the prayer, it appears that the said application was moved under the provisions of the Mamlatdars' Courts Act, 1906 (hereinafter referred to as "the Act of 1906"). However, the Tahsildar by exercising the powers under Section 143 of the Maharashtra Land Revenue Code, 1966 (hereinafter referred to as "MLR Code") granted approach way to the respondent No.1 through the petitioner's field and the said order was maintained by the Sub-Divisional officer as well as by the Additional Collector vide order dated 27/10/2017 and 31/07/2018, respectively.

5. I have perused the record and from the record, it is clear that there was no prayer made by the respondent No.1 in the application moved before the Tahsildar to grant a new way to him. Furthermore, if the Tahsildar has exercised the powers under Section 143 of the MLR Code, no such notice was given to the petitioner calling upon him to make submission as regard the exercise of powers under Section 143 of the MLR Code.

6. From the language of Section 5 of the Act of 1906 and Section 143 of the MLR Code, it is evident that both the powers are distinct and separate.

7. The power under Section 5 of the Act of 1906 is for removal of obstruction. Whereas, under Section 143 of the MLR Code the power is as regards grant of new approach way.

8. Similarly, the consideration for grant of both prayers are different and distinct and therefore, if the Tahsildar was of the view that, the application should be considered under Section 143 of the MLR Code, he ought to have given such notice to the petitioner.

9. Thus, it appears that keeping the petitioner in dark about exercise of powers by the Tahsildar under Section 143 of the MLR Code, the order came to be passed under Section 143 of the MLR Code against the petitioner which has been maintained by the Sub-Divisional Officer and the Additional Collector.

10. In the circumstances, though the learned counsel for the respondent No.1 supports the impugned order and submits that the authorities below have rightly exercised the jurisdiction, for the reasons stated above, I do not find any favour with the submission made by the learned counsel for the respondent No.1.

11. Accordingly, I pass the following order:

- i) The Writ Petition is partly allowed.
- ii) The impugned order dated 31/07/2018 passed by Additional Collector, Akola, impugned order dated 27/10/2017 passed by Sub-Divisional Officer, Akot and impugned order dated 20/06/2015 passed by the Tahsildar, Akot are hereby quashed and set aside.
- iii) The matter is remanded back to the Tahsildar, Akot to decide the application afresh, on its own merits, after hearing the parties.

- iv) The Tahsildar shall give a clear notice to the parties about the powers which he is going to exercise in the present matter and also ask for compliance as per such provisions.
- v) Considering the nature of the dispute, the Tahsildar shall decide the matter within three months from today.
- vi) The learned counsel for the petitioner is not disputing that after the order passed by the Additional Collector the respondent No.1 is using the approach way granted by the Tahsildar. Considering further that it is a rainy season and the agricultural operations are going on, it is directed to the petitioner **not to obstruct the approach way** of the respondent No.1 till decision of the Tahsildar.

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

JUDGE

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