



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 7412 OF 2021

HANUMANT VITHALRAO KOLHE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...

Mr. Bhagwat A. Shinde, Advocate for the Petitioners.

Mr. S. B. Jadhav, AGP for Respondents-State.

Mr. C. C. Deshpande, Advocate for Respondent No.6.

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**CORAM : S. G. CHAPALGAONKAR, J.
DATED : 27th JUNE, 2024.**

P.C.:-

1. In pursuance of the service of notice issued by this Court, respondent no.6 caused appearance. However, other private respondents remained absent.

2. The respondent nos.4 to 8 instituted proceedings under Section 143 of the Maharashtra Land Revenue Code (for short 'MLR Code') before the Tahsildar, Pathri. The proceeding was concluded by order dated 30.07.2019. The respondents were permitted to use the way from bandh of Gut No.179 and 200 as well as 178 and 200, which goes through East-West direction. The petitioners assailed the order of the Tahsildar in Appeal filed under Section 247 of the Maharashtra Land Revenue Code (for short 'MLR Code') before the Sub Divisional Officer, Pathri, who finally decided the proceedings vide order dated 13.01.2021, thereby confirming the order passed by the Tahsildar.

3. The learned Advocate appearing for the petitioners submits that Appeal was preferred by petitioners under Section 247 MLR Code, thereby assailing order passed under Section 143 of the MLR

Code. The Sub Divisional Officer, Pathri treated their Appeal as Revision and decided the same by following the procedure prescribed under Section 23(2-A) of the Mamlatdar Courts Act. As such, impugned order is product of gross error of jurisdiction and consequential prejudice to the petitioners.

4. The learned Advocate appearing for respondent no.6 supports the order.

5. Having considered submissions advanced, it is apparent that the proceedings under Section 143 of the MLR Code confers jurisdiction upon the Authorities to grant way, if necessity arises. However, jurisdiction under Section 5 of the Mamlatdar Courts Act can be exercised only for the purpose of removal of obstructions in the existing way. In the present case, proceeding was initiated before Tahsildar under Section 143 of the MLR Code and any order passed under such proceeding is appealable under Section 247 of the MLR Code. The petitioners have rightly invoked the remedy of Appeal while assailing the order of the Tahsildar. However, perusal of the order impugned in this Writ Petition shows that the Sub Divisional Officer, Pathri assumed jurisdiction under Section 23(2-A) of the Mamlatdar Courts Act, which is in the nature of Revision Application. As such, the Sub Divisional Officer, Pathri has completely lost the purport and scope of his jurisdiction while passing the impugned order, which cannot be sustained in law. Hence, the following order:

ORDER

a. Writ Petition is partly allowed.

b. The impugned order dated 13.01.2021 passed by the Sub Divisional Officer, Pathri in Revision Application No.2020/ROR/A/171 is hereby quashed and set aside.

c. The matter is remitted back to the Sub Divisional Officer, Pathri to consider and decide the Appeal filed by the petitioners under Section 247 of the MLR Code after giving opportunity of hearing to the parties within a period of three months from the date of this order.

(S. G. CHAPALGAONKAR)
JUDGE

Devendra/June-2024