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

WRIT PETITION NO. 5961 OF 2022

Baburao Balabhau Dikhule And Others

....Petitioner

VERSUS

The State Of Maharashtra Through Its Secretary And Others

.....Respondent

.....
Advocate for the Petitioner : Mr. Dhawale Bhushan S.

AGP for Respondents: Mr. A.S. Shinde.

CORAM : S.G. CHAPALGAONKAR, J.

DATE : 18TH JULY, 2024.

ORDER :-

1. The petitioner impugns the order dated 8.4.2022 passed in Revision No. 2021/ROR/CR-86 by the Sub Divisional Officer, Jalna, as against the order dated 2.1.2023 passed by respondent No.3 Tahsildar in Rasta Case No. Ja. Kra 2018/Jama-1/ROR/CR-111.

2. Heard learned advocates appearing for respective parties. Respondent Nos. 4 to 8 instituted Rasta Case No. Ja. Kra 2018/Jama-1/ROR/CR-111 before the Mamlatdar, invoking Section 5(2) of the Mamlatdar Courts Act. The petitioner contested the said proceeding and denied existence of customary way as claimed. The spot inspection was carried and Panchanama was prepared which was placed before the Mamlatdar. The respondent No.3 favourably considered the application and directed the petitioners not to obstruct the use of the

customary way from the common Bandh of Gat No 36 and 31. The petitioner challenged the order of Tahsilder by filing R.C.S. No. 319 of 2021 before the Civil Judge Junior division, Jalna. The said suit is pending till this date. The petitioner has also assailed the same by filing revision under section 23(3) of the Mamlatdar Courts Act. The S.D.O. dismissed the revision application and maintained the order of the Mamlatdar.

3. The learned advocate for petitioner submits that there is absolutely no evidence as regards to existence of customary way as claimed by respondent Nos. 4 to 8. The spot inspection or any other material nowhere depict existence of such way. He would, therefore, submit that the petitioner has instituted the suit seeking declaration and injunction before the Civil Court. Admittedly, said suit is pending till this date.

4. In that view of the matter, petitioner can not prosecute two remedies in respect of one and same claim. It is trite that the decree of civil court overrides any order passed under Mamlatdar Courts Act. Therefore, the conclusion that would be drawn by the civil court will govern the parties. In that view of the matter, writ petition is dismissed with liberty to petitioner to prosecute his remedy in the suit. The civil court shall consider the issue on the basis of material tendered during trial and pass orders in accordance with law, without influenced by any observations made in the proceeding under the Mamlatdar Courts Act..

[S.G. CHAPALGAONKAR]
JUDGE

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