

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6193 OF 2023

Vishal Vitthal Jagtap And Another

VERSUS

Manik Dattu Bhosale And Others

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Advocate for the Petitioners : Mr. Wakure Sanjay A

AGP for Respondents/State : Mrs. A.S. Mantri

Advocate for Respondent Nos.1 to 7 : Mr. R.D. Kawade

Advocate for Respondent Nos.8 to 12 & 14 : Mr. S.A. Deshmukh

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CORAM : S.G. MEHARE, J.

DATED : APRIL 24, 2024

PER COURT:-

1. Heard learned counsel for the petitioners and learned counsel for the contesting respondents.

2. The brief facts of the case were that present respondent Nos.8 to 14 had filed the case under Section 5(2) of the Mamltadar's Courts Act before the Tahsildar against respondent Nos.15, 16 and two other family members. The Tahsildar allowed the application of respondent nos.8 to 14. Thereafter, the petitioners had impugned the said order before the Sub-Divisional Officer, Osmanabad. In that petition, present petitioners had filed a pursis that they are ready to keep a way on the eastern side of survey nos. 947 and 946. In view of the statement of the present petitioners, the Sub-Divisional Officer had accepted the proposal. Thereafter, respondent Nos.1 to 7 filed a

review petition before the Sub-Divisional Officer. The Sub-Divisional Officer on leave of the Additional Commissioner, Osmanabad reviewed the order and cancelled his earlier order dated 28.11.2022 and confirmed the order of the Tahsildar. Against the said order, the petitioners are before the Court.

3. A short question as raised is whether the Sub-Divisional Officer has power to review under the Mamlatdar's Courts Act.

4. Learned counsels were heard at length. Sufficient time was granted to the learned counsel for the respondents to make a search on any provisions of law conferring the powers to review the order passed under the Mamlatdar's Courts Act. He fairly stated that he did not get any case laws on this point.

5. The Mamlatdar's Courts Act is a complete code which provides for presentation of the plaint, rejection of the plaint, return of plaint, procedure for admission of plaint, attendance of witnesses, examining the witnesses and execution of the orders passed under the said Act. The appeal against the order of the Mamlatdar Act is also not available. The revision powers are delegate upon the Deputy Collector by the Collector. The Act is silent about the review powers of the authority. The law is well settled that unless the law confers the power to review, no authority can review the orders. No authority can exercise the discretion to review the order. There is nothing before the Court under what provisions of law the Additional

Collector granted leave to the Sub-Divisional Officer to review his order. Since the law does not provide for review, the impugned order of the Sub-Divisional Officer dated 31.03.2023 warrants interference.

Hence, the following order :

ORDER

- (i) The writ petition is allowed.
- (ii) The order of the Sub-Divisional Officer passed in Case No.2022/ROR/A-423 dated 31.03.2023 stands quashed and set aside.
- (iii) However, the petitioners in that matter i.e. respondent nos.1 to 7 are at liberty to take legal remedy available to them.
- (iv) No order as to costs.

(S.G. MEHARE, J.)