



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6187 OF 2023

Sidram Rachappa Gabane,
Age : 55 Years, Occ. Agri.
R/o. Aarali (Bk), Tal. Tuljapur,
Dist. Osmanabad.

....Petitioner

VERSUS

1. The Sub-Divisional Officer,
Osmanabad.
2. The Tahsildar,
Tuljapur, Tal. Tuljapur,
Dist. Osmanabad.
3. The Circle Officer,
Naldurg Division, Tahsil Office,
Tuljapur, Dist. Osmanabad.
4. Yuvraj Sidram Sutar, Age : 50 Years,
5. Chimubai Yuvraj Sutar, Age : 45 Years,
6. Vikram Yuvraj Sutar, Age : 25 Years,
7. Sidram Kisan Sutar, Age : 70 Years,
8. Mallikarjun Kisan Sutar, Age : 65 Years,
9. Rajkumar Mallikarjun Sutar, Age : 32 Years,
10. Vijay Mallikarjun Sutar, Age : 32 Years,
11. Laxmibai Balbhim Upase, Age : 35 Years,
12. Shashikant Mohan Upase, Age : 32 Years

13. Dagadu Khandu Vhatkar, Age : 28 Years,
All occupation Agriculture,
Respondent Nos. 3 to 13 resident of
Aarali (Khu). Tal. Tuljapur,
District Osmanabad. .. Respondents

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Advocate for the Petitioner : Mr. S. M. Pandit
AGP for Respondent Nos. 1 to 3: Mrs. R. R. Tandale
Advocate for Respondent Nos. 4 to 10 : Mr. Santosh P Patne
Advocate for Respondent No.13 : Mr. M.B. Ubale h/f Mr. L.K.Pradhan

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CORAM : S. G. MEHARE, J.

DATE : 09.01.2024

PER COURT :

1. Heard the learned counsel for the petitioner and the respondents.
2. The petitioner has a grievance that he was not a party to the proceeding under Section 5 of the Mamlatdar Courts Act. He has a share in Gut No. 19 of village Arali Khurd, Taluka Tuljapur, District Osmanabad. He further submits that without adding him as party, the order granting road through Gut No. 19 has been obtained. He had preferred the revision before the Sub Divisional Officer, Osmanabad. The revision was also dismissed. He had also filed a civil suit for injunction against the present contesting respondents. He stated that though he was not party to the proceeding before the Mamlatdars, the

Tahsildar, Tuljapur and Circle Officer are issuing the notices to him for executing Mamlatdars order dated 14.02.2022. He would submit that since he was not party to the proceeding, the order of the Tahsildar under Mamlatdars Court Act not binding upon him. The way as alleged was never in existence. It is an attempt to create a new way. The other contesting respondent No.13 had also filed a civil suit after order of the Tahsildar, dated 14.02.2022.

3. The learned counsel for respondent Nos. 4 to 10 would submit that they never claim right of way against the present petitioner. It is the State who is issuing the notices to the present petitioner.

4. Respondent No. 13 has no serious say of this case as his Civil Suit is pending.

5. Section 22 of the Mamlatdars' Court Act, provides that order passed under the said Act is subject to the decision of the Civil Court. The present petitioner and respondent No. 13 both have filed civil suits. Respondent No.13 has impugned the order of the Tahsildar passed under the Mamlatdars' Court Act in Civil Court. A small question is whether the order of Tahisldar dated 14.2.2022 could be executed against the present petitioner. The petitioner was not a party to the suit and the contesting respondents also did not press for the

execution of the said order against the present petitioner. In view of this facts and admission of the respective parties, the Court is of the view that the revenue authority cannot issue notice to the petitioner for the execution of the said order. Therefore, the executing authority is restrained from issuing any notice for executing the said order against the petitioner. The right of the parties are kept open, as the civil suits are pending.

6. In view of the above, the executing authority is directed not to execute the order of Tahsildar, dated 14.02.2022 passed in जा.क्र. २०२० / जमा—२ / कावि against the present petitioner.

7. With the above direction the petition stands disposed of.

(S. G. MEHARE)
JUDGE

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