



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

28 WRIT PETITION NO. 11671 OF 2022

Bhimabai Sunil Suryavanshi And Another

VERSUS

**The State Of Maharashtra Through District Collector And
Others**

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**Advocate for the Petitioner : Mr. S.S. Kulkarni h/f Y.H.
Jadhav**

AGP for Respondents: Mr. K.B. Jadhavar

Advocate for Respondent nos.4,5 : Mr. N.D. Sonavane

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CORAM : S. G. CHAPALGAONKAR, J.

Dated : June 10, 2024

PER COURT :-

1. The petitioners have approached this Court under Article 227 of the Constitution of India, thereby assailing the order dated 12.10.2022 passed by the Sub Divisional Officer, Vaijapur District Aurangabad.

2. Mr. Kulkarni, learned advocate appearing for the petitioners submits that in a Rasta Case, Mamlatdar had followed the procedure, caused inspection, prepared map and panchnama and rendered his decision affirming the case of the petitioners and directed to reinstate obstructed way. However, under the impugned order, S.D.O, who is revisional authority entered into factual aspects of the matter and without any justification remanded the matter back to the Mamlatdar for decision afresh. He submits that the impugned order has been stayed by this court. Therefore, the proceedings before the

Mamlatdar rendered stands till this date. Mr. Kulkarni, after referring to the reasoning part of the impugned order submits that no specific reasons are assigned requiring remand of the matter. No directions are given for fresh inspection or no specific purpose is highlighted requiring remand of the matter to trial court. He submits that S.D.O. himself, could have decided the matter based on record that is pressed into service by parties without resorting to remand.

3. Per contra, learned advocate appearing for the respondents would submit that no prejudice would cause to the petitioners. The parties would get an opportunity to put up their stand and documents in support of their contentions and matter can be directed to be decided expeditiously by the Mamlatdar.

4. Having considered the submissions advanced by the learned advocates appearing for the respective parties, apparently, the decision rendered by the Mamlatdar has been set aside in exercise of revisional powers by the S.D.O. giving reason that the existence of electric poles and obstruction created on account of such poles needs to be ascertained. Pertinently, the map and spot panchnama prepared during spot inspection, highlights all the aforesaid aspects. Parties are not seriously disputing correctness of the panchnama or the map. Existence of electric poles is also specifically marked in map. Perusal of the plaint depict that petitioners had applied for removal of obstruction on customary way created by the respondents by sowing Maze. Therefore, existence of the

electric poles or any obstruction on that count is not the subject matter in issue. It was therefore necessary for the revisional Court to decide the matter on the basis of material which is already made part of record.

5. Reasoning part of the impugned order nowhere depicts necessity for re-inspection or recording of evidence of parties. Therefore, no justification for remand of the matter can be observed. Casual orders of remand of matters by court, exercising revisional jurisdiction cannot be countenanced. Consequently, the impugned order cannot be sustained in law. Hence, the same is quashed and set aside with further directions to the Sub Divisional Officer to hear the parties and decide revision application on the basis of the material already pressed into service within the period of two months from the date of appearance of the parties. The parties to appear before the Sub Divisional Officer on 24th of June, 2024.

6. Writ Petition accordingly stands disposed off. No costs.

(S. G. CHAPALGAONKAR, J.)

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aaa/-f