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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

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**WRIT PETITION NO.12392 OF 2022
WITH
INTERIM APPLICATION NO.14306 OF 2023**

Anandrao Ishwar Dhyagude ... Petitioner

V/s.

Bhaganna Laxman Pandhre & Ors. ... Respondents

Mr. R. S. Alange for the petitioner/applicant.

Mr. Sumedh S. Modak for respondent Nos.1, 2, 5 to 10,
11a to 11d, 12, 13, 15, 17 & 18.

Mr. P. G. Sawant, AGP for the State/respondent Nos.20
& 21.

CORAM : AMIT BORKAR, J.

DATED : JANUARY 23, 2024

P.C.:

1. The petitioner is challenging an order passed by the Revisional Authority under section 23 of the Mamlatdars' Courts Act, 1906 confirming order under section 5(2) of the Mamlatdars' Courts Act, 1906 directing the petitioner to remove obstruction caused in relation to the road alleged by the respondents.

2. It appears that in the year 1986, some of the respondents approached the Tehsildar under section 143 of the Maharashtra Land Revenue Code, 1966 in relation to the road which is subject

matter of present writ petition. The Tehsildar, by order dated 6th March 1986, granted declaration of existence of the road in favour of some of the respondents. Based on the order under section 143 of the Maharashtra Land Revenue Code, 1966, the respondents filed an application before the Mamlatdar under section 5 of the Maharashtra Land Revenue Code, 1966.

3. The petitioner filed a reply contending that there is no road in existence and order passed by the Tehsildar in the year 1986 has not been executed.

4. The Mamlatdar, based on order dated 6th March 1986, recorded a finding that the petitioner has caused obstruction to the said road and directed the petitioner to remove the obstruction.

5. Aggrieved thereby, the petitioner filed revision before the Additional Collector. The Additional Collector relying on order under section 143 of the Maharashtra Land Revenue Code, 1966 confirmed the order passed by the Mamlatdar, hence, the present writ petition.

6. Learned advocate for the petitioner submitted that the Panchnama relied by the authority was effected by the respondents amongst themselves and the petitioner was not party to the said consideration. Both the parties have signed the Panchnama. According to him, the application of the respondents was not complied mandates under sections 7, 9 and 9 of the Mamlatdars' Courts Act, 1906. The road as alleged is not in existence.

7. In so far as the first contention of the petitioner that the Panchnama relied by the authorities was executed amongst the

respondents is concerned, ordinarily such contention could have been considered but in the facts of the case, the authority under the Maharashtra Land Revenue Code, 1966 exercising power under section 143 of the Maharashtra Land Revenue Code, 1966 declared existence of road in the year 1986. Once statutory authority grants declaration of existence of road, such declaration is binding on all the parties. Existence of such order is sufficient to arrive at finding regarding existence of road which by itself would entitle the respondents to claim relief of removal of obstruction. In view of existence of such order, it was not necessary for the respondents to produce any other material to prove factum of existence of road.

8. It is not the case of the petitioner that the declaration granted by the Tehsildar in exercise of power under section 143 of the Maharashtra Land Revenue Code, 1966 was for different road that the road which is subject matter of present writ petition. Therefore, in my opinion, the submission of the petitioner has no merit.

9. In so far as the other contentions raised by the petitioner regarding non-compliance of sections 7, 8 and 9 of the Mamlatdars' Courts Act, 1906 are concerned, the said provisions have been enacted to afford opportunity of hearing to the opponents by way of pleading and by way of production of documents to support the claim. Compliance of such provision depends on the nature of prejudice caused to the petitioner. Once there is order under section 143 of the Maharashtra Land Revenue Code, 1966, non-furnishing of list of witnesses on other

compliances meant for affording opportunity of hearing stands complied with. Therefore, there is no legal prejudice caused to the petitioner. Hence, the order passed by the authorities under section 5 and confirmed under section 23 do not suffer from legal infirmity.

10. The writ petition is dismissed. No costs.

11. In view of dismissal of the writ petition, the interim application stands disposed of as infructuous.

(AMIT BORKAR, J.)