



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 13114 OF 2023

Shubhana Bhairu Kamble

.....Petitioner

Vs.

The State of Maharashtra Thr
Its Ministry of Rural Development
and others

.....Respondents

Mr. Bhushan Walimbe a/w Mr. Mayank Tripathi for the petitioner
Mr. P. P. Pujari, AGP for the State

CORAM : GAURI GODSE, J.

DATE : 8th JANUARY 2024.

P.C.

1. This petition challenges the order dated 30th May 2023 passed by the Sub-Divisional Officer in Revision Application No. 7 of 2022 filed by respondent nos. 4 and 5 and others under Section 23(2) of the Mamlatdar's Courts Act, 1906 ('the said Act'). Said Revision was filed for challenging the order passed by the Tahsildar rejecting the application under Section 5(2) of the Act seeking relief for removing

obstruction for using the right of way.

2. Tahsildar had rejected the application by holding that there was an alternate land available to respondent nos. 4 and 5 and that the relief sought was in respect of a road that was in a Gaothan land and was not going towards agricultural land.

3. By the impugned order, the Revisional Authority has observed that the application could not have been rejected on the ground that there was an alternate land available. He observed that the Tahsildar needed to find out as to whether the obstruction was caused as prayed by respondent nos. 4 and 5 and if there was an obstruction, whether it was necessary to remove the obstruction.

4. Learned counsel for the petitioner submits that the land in question is not used for agricultural land and that the Tahsildar has rightly rejected the application by holding that he had no jurisdiction under Section 5(2) of the said Act to decide the application. He further submitted that the Tahsildar had clearly observed that the land in question was near the house of the respondent nos. 4 and 5. He therefore submitted that the land in question is residential land and

Tahsildar has rightly rejected the application by holding that he had no jurisdiction under Section 5(2) of the said Act to decide the application.

5. I have perused the papers. I do not find any illegality in the reasoning given by the revisional authority that the Tahsildar ought to have adjudicated the prayers of respondent nos. 4 and 5 seeking reliefs for removal of the obstruction. The revisional authority has remanded the matter to Tahsildar for reconsideration and adjudicating the issues framed by the revisional authority. The revisional authority has framed the issues in paragraph 5 of the impugned order.

6. So far as the issue regarding the jurisdiction of Tahsildar to entertain the application under Section 5(2) is concerned, I do not see any document on record to show that the land in question is not agricultural, hence, it can again be examined by the Tahsildar at the time of re-hearing the application in view of the order of remand passed by the impugned order.

7. In view of the submissions made by the petitioners with respect to jurisdiction of the Tahsildar under the said Act is concerned, it is made clear that I have not examined the issue with respect to

jurisdiction and thus, it will be open for the Tahsildar to decide the issue of jurisdiction at the time of re-examining the application as per the remand order passed by the revisional authority.

8. In view of the aforesaid, I do not find any reason to interfere in the order of remand by exercising powers under Article 227 of the Constitution of India.

9. The petition is therefore dismissed with aforesaid clarification that the issue of jurisdiction raised by the petitioner in this petition is kept open and the Tahsildar shall decide the same in accordance with law.

[GAURI GODSE, J.]