



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

Writ Petition (WP) No. 3019 of 2017

Fakira Tukaram Kharat

Versus

The Sub Divisional Officer, Buldhana and others

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri Sunil S. Chauhan, Advocate for the petitioner.

Shri B.M.Lonare, AGP for the respondent nos. 1 to 3.

CORAM : ANIL S. KILOR, J.

DATED : 17th JANUARY, 2024.

Heard Shri Chauhan, learned counsel for the petitioner and Shri B.M.Lonare, learned Assistant Government Pleader for the respondent nos. 1 and 2. None for the respondent no.3 to 5, though served long back.

2. Present matter pertains to obstruction allegedly created in the approach way of the respondent no.3 to approach his field.

3. Admittedly, in the present matter, the respondent no.3 never made any application under the

Mamlatdar Court's Act, 1906, for removal of alleged obstruction to approach his way from the field of the respondent nos. 4 and 5. On the contrary, the petitioner had filed a proceeding under the Mamlatdar's Courts Act, 1906 before the Mamlatdar against the respondent nos. 4 and 5 and in that the petitioner was succeeded.

4. It is pertinent to note that in the said proceeding, the respondent no.3 was made party as non-applicant no.5. In his reply he has categorically stated that he had an alternate approach way to his field from Gat No. 184. Accordingly, the said statement was recorded by the Tehsildar in his order and allowed the application of the petitioner under Section 5 of the Mamlatdar's Court Act, 1906 vide order dated 19th August, 2008.

5. The respondent no.3 without filing any independent application under Mamlatdar's Courts Act, 1906, moved an application for implementation of order passed in favour of the petitioner dated 19th August, 2008, saying that he has no alternate way to approach his field.

6. Thus, it appears that the application moved by the respondent no.3 before the Tehsildar was not under the Mamlatdar's Court Act, 1906 but it was made

for implementation of the order dated 19th August, 2008 which was passed in the proceeding filed by the petitioner under the Mamlatdar's Courts Act.

7. However, the Tehsildar entertained such application at the behest of the respondent no.3 and it was allowed and the said order of the Tehsildar dated 2nd July, 2013 was upheld by the Sub-Divisional Officer vide order dated 18th December, 2015.

8. The learned Sub-Divisional Officer upheld the said order of the Tehsildar though it was pointed out that the respondent no.3 has no connection with the order dated 19th August, 2008 passed in favour of the petitioner.

9. The learned Sub-Divisional Officer without dealing with said argument rejected the revision application filed by the petitioner. The order is without reasons. In the circumstances, I am of the opinion that the above referred facts go to the root of the matter to determine the jurisdiction of the Tehsildar. Hence, I am of the considered view that the matter needs to be remanded back to the Tehsildar to decide it afresh after considering the observations made herein above.

10. In that view of the matter, I pass the following order.

i. The writ petition is partly allowed;

ii. The order dated 2nd July, 2013 passed by the Tehsildar, Chikli, Dist. Buldhana and order dated 18th December, 2015 passed by the Sub-Divisional Officer, Buldhana are hereby quashed and set aside.

iii. The Tehsildar, Chikli, Dist. Buldhana is directed to decide the matter afresh after hearing both the parties.

[ANIL S. KILOR, J.]