



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

WRIT PETITION NO. 4163 OF 2024

Ramkrushna Dnyandev Mahajan

VERSUS

The State Of Maharashtra Through Its Principal Secretary And Others

Mr. Bhushan Mahajan Advocate for Petitioner

Mr. N. D. Raje, AGP for Respondent Nos. 1 to 4/State

Mr. Vinod Patil, Advocate for Respondent No. 5

CORAM : R. M. JOSHI, J.

DATE : 19th March, 2025

PER COURT :-

1. This petition takes exception to the order passed by Tahsildar in Vahivat Case No. 24/2022 dated 10.07.2023 under Section 5 of the Mamalatdar Courts Act (for short “the Act”).

2. This petition takes exception to the said order on the ground that the Tahsildar had no jurisdiction to entertain any such application once a suit in respect of the subject matter is pending before the Competent Civil Court.

3. Learned counsel for the Petitioner has placed reliance on the judgment of co-ordinate Bench of this Court in case of **Vishwanath Versus Usha in Writ Petition No. 4027 of 2009.** It is his submission that since it was

brought to the notice of Tahsildar that the suit is already filed and findings before the Competent Civil Court, the application itself ought not to have been entertained.

4. Learned counsel for contesting respondents tried to support the impugned order. It is his submission that since Application Exhibit 5 filed in Regular Civil Suit No. 51/2022 was not passed by the petitioner, the respondent shall left with no other remedy. According to him, on merits to the case, the order impugned deserves no interference.

5. The provision of Section 5 of the act for the purpose of seeking urgent relief for a agriculturist whose customary way has been obstructed by the other side. Needless to say that in the said proceeding, under Section 5 of the Act, the rights of the parties cannot be determined. Admittedly, in respect of subject property, Regular Civil Suit No. 51/2022 came to be filed on 28.09.2022, where as proceeding before the Mamlatdar was instituted in 20.10.2022. It is thus clear that after the suit came is filed, the jurisdiction of the Tahsildar was invoked by the contesting respondent. It is not the case wherein it was no brought to the notice of Tahsildar that the subject matter of the suit proceeding before him is subjudice before the Civil Court. Order impugned clearly indicate so. The Tahsildar in the said proceeding could not

have determined the rights of parties qua subject property/matter and when there is a substantiate suit filed in respect of such property, Tahsildar would not get any jurisdiction to entertain and decide application under Section 5 of the Act. In view of the judgment of Vishwanath (cited supra), it was not open for the Tahsildar to entertain the application in respect of the subject matter which is subjudice before Civil Court.

6. In view of the above, petitioner has made out for causing interference in the impugned order. As a result of the above discussion, impugned order is set aside. Proceeding filed before the Tahsildar bearing No. 24/2022 stands dismissed.

7. It is further however that the dismissal of the said proceeding would not preclude the contesting respondent to adopt appropriate remedy as provided by law in order to get relief from the Civil Court. It is further clarified that in view the order of dismissal of the proceeding before the Tahsildar and setting aside of the impugned order, consequential actions undertaken stand vitiated.

(R. M. JOSHI, J.)

bsj