IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

49 WRIT PETITION NO. 16462 OF 2026

SAGAR SHIVAJI MORE
VERSUS
THE STATE OF MAHARASHTRA THR COLLECTOR DHARASHIV AND OTHERS

...
Advocate for the Petitioner : Mr. More Abhijit S.
AGP for Respondents/State : Ms. Deepali S. Jape
Advocate for Respondent No. 5 : Mr. Yogesh G. Biradar
...

CORAM : MANJUSHA DESHPANDE, J.

DATE : 25.11.2026.

PER COURT :

1. The petitioner is challenging the order passed by the Tahsildar, Dharashiv, dated 29.11.2024, on the application filed under Section 5 (2) of the Mamlatdar Court's Act, 1906. The application filed by respondent No. 5, herein has been allowed. The order passed by the Tahsildar, Dharashiv has been confirmed by the Deputy Collector, Manjara Project, Dharashiv, vide order dated 25.08.2026. It is the contention of the learned Advocate for the petitioner that, although the application has been filed by respondent No. 5 under Section 5 (2) of the Mamlatdar Court's Act, 1906, the Tahsildar, Dharashiv has passed the order in exercise of his powers under Section 143 of the Maharashtra Land Revenue Code and the error so committed by the Tahsildar, Dharashiv, has been confirmed by the Deputy Collector, Dharashiv, vide order dated 25.08.2026, hence he has appeared before this Court.

2. The reliance is placed on the reported judgment of this Court in ***Writ Petition No. 13351 of 2022 (Prabhakar and Ors. Vs. The State of Maharashtra and Ors.) dated 04.07.2024***, wherein this Court has reiterated the legal position in respect of the jurisdiction to pass order under Section 143 of the Maharashtra Land Revenue Code, 1966. It was also observed that the Court cannot invoke the jurisdiction under the Mamlatdar Court's Act, 1906, to pass orders under Section 143 of the Maharashtra Land Revenue Code, 1966, hence the matter was remanded back to the Tahsildar for afresh decision under the Mamlatdar Court's Act.

3. The learned Advocate appearing for the contesting respondent No. 5 also does not dispute the position that, he had filed an application under Section 5 of the Mamlatdar Court's Act. Upon perusal of the impugned order it is apparent that the Tahsildar has categorically recorded that, the applicant therein had filed an application in respect of the easementary rights from Gut No. 134 and 135 on the bandh and it is also recorded that upon the spot inspection there was no road passed from Gut No. 135. Based on such observations the impugned order has been passed by the Tahsildar, in exercise of powers under Section 143 of the Maharashtra Revenue Code, which apparently is not tenable, since the application under Section 5 (2) of the Mamlatdar Court's Act and the application under Section 143 of the Maharashtra Land Revenue Code govern in two different fields and operate in two different contingency.

Thus, the order passed by the Tahsildar, Dharashiv becomes unsustainable, in the result, the order passed by the Tahsildar, Dharashiv dated 29.11.2024 on the application filed by respondent No. 5 is quashed and set aside. Consequently, the order passed in Revision, confirming the said order dated 25.08.2026, passed by the Sub Divisional Officer, is also quashed and set aside and the matter is remanded back to the Tahsildar, Dharashiv for fresh consideration/decision. The Tahsildar, Dharashiv shall pass appropriate order strictly within the framework of the provisions of Mamlatdar Court's Act, 1906 and the applicable Laws thereunder.

4. With the aforementioned directions, the Writ Petition is partly allowed and the matter is remanded back to the Tahsildar, Dharashiv for afresh decision/consideration.

5. No adverse orders shall be passed against the petitioner till the matter is decided afresh by the Tahsildar, Dharashiv.

6. The parties shall appear before the Tahsildar, Dharashiv on 01.12.2026.

7. The matter shall be decided by the Tahsildar, Dharashiv as early as possible and preferably within a period of 8 weeks thereafter.

8. Since it is informed that the order passed by the Tahsildar, Dharashiv, is likely to be executed at 11.00 a.m. in the morning today, the learned AGP is requested to immediately communicate this order to the concerned/State.

(MANJUSHA DESHPANDE, J.)

Mahajansb/