

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

BENCH AT AURANGABAD.

WRIT PETITION NO.919 OF 2015

Laxman S/o Rukhmaji Jambilwad ...Petitioner.

Versus

Potanna S/o Ganpati Jambilwad
and others. ... Respondents.

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**WITH
CIVIL APPLICATION NO.7299 OF 2015
IN
WRIT PETITION NO.919 OF 2015.
WITH
CONTEMPT PETITION NO.387 OF 2015
IN
WRIT PETITION NO.919 OF 2015.**

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Mr.P.R.Katneshwarkar, advocate for the petitioner.
Mr.S.G.Karlekar, A.G.P. for the State.
Mr.A.B.Dhongade, advocate for the Respondent No.1
and for petitioner in Contempt Petition.

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CORAM : S.V.GANGAPURWALA, J.

Date : 15.12.2017.

PER COURT :

1. The present Respondents had filed application U/s 5(2) of the Mamlatdar's Courts Act. The Mamlatdar directed the Circle Officer to remove obstruction. Aggrieved thereby, the

petitioner filed the Revision. The Revision is dismissed. Hence, the present petition.

2. Mr.Katneshwarkar, learned counsel for the petitioner submits that the Mamlatdar has passed an order without even issuing notice to the petitioner. The provisions of Mamlatdar's Courts Act were not at all followed. The road is being given from the middle of the petitioner's land. Even notice of inspection was never given to the petitioner. Everything was behind the back of the petitioner.

3. Mr.Dhongade, learned counsel submits that even though the notice was not issued to the petitioner by the Mamlatdar, the petitioner had availed the opportunity and was heard in Revision. The petitioner was obstructing the way from the year 2014 and as such the Respondents had moved the Mamlatdar. Upon inspection, it was found by the Public Officer that the petitioner has obstructed the road.

4. The petition U/s 5(2) of the

Mamlatdar's Courts Act, is in the nature of the plaint. The Mamlatdar's Courts Act lays down the entire procedure to be adhered to and followed while deciding the petition/plaint. Section 14 of the Mamlatdar's Courts Act specifically requires the Mamlatdar to issue notice to the other party as far as possible in Schedule A of the said Act.

5. In the present case, notice was never issued to the petitioner and all proceedings by the Mamlatdar were in absence of the petitioner and without notice to the petitioner. As no opportunity has been given to the petitioner, the said order can not be sustained. The Revisional authority has also not considered this aspect about the notice not being issued to the petitioner and the petitioner not being heard by the Mamlatdar.

6. Considering above, the impugned order passed by the Mamlatdar, so also the Revisional authority are quashed and set aside. The parties are relegated before Mamlatdar. The Respondent may rectify the defects if any in his

application. The petitioner herein will have every right to file Written Statement/Say to the plaint and thereafter Mamlatdar shall decide the application filed by the present Respondent on its own merits in accordance with law, expeditiously, preferably by end of April 2018. The parties shall appear before the Mamlatdar on 2.1.2018.

7. The Writ Petition is disposed of. No costs.

8. In view of disposal of Writ Petition, all orders passed thereon merged in the final order.

9. In view of disposal of Writ Petition, the Contempt Petition also stands disposed of.

10. Pending Civil Application also stands disposed of.

(S.V.GANGAPURWALA, J.)

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