

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

WRIT PETITION NO.2268 OF 2018

SURESH SHESHRAO ANKUSH
VERSUS
THE ADDITIONAL COLLECTOR AURANGABAD AND OTHERS

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Advocate for the Petitioner : Shri Barlota Ambar S. a/w Shri H.A.Joshi.

AGP for Respondents 1 to 3 : Shri S.R.Yadav.

Advocate for Respondent 4 : Dr. Hiraji T. Gaikwad.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 28th March, 2019

Per Court:

1 This matter was heard for quite sometime on 26.03.2018 and was posted today for passing orders.

2 I am of the view that the impugned order of the Revisional Authority under Section 23(2) of the Mamlatdars' Courts Act, 1906, deserves to be sustained. However, I find that the Revisional Authority has committed one error. Though he has concluded that the spot inspection was not properly done, the village sketch map or revenue records were not referred to, had acted on the basis of the spot inspection conducted by the Circle Inspector, he should have directed a re-hearing of the matter. While concluding that the procedure was not followed resulting in the order of the Tahasildar passed under Section 5(2) being set aside, the

Revisional Authority should have directed a re-hearing to do complete justice.

3 The learned advocate for the original opponent before the Tahasildar submits that the particular date for appearance may be granted when all the parties would appear before the Tahasildar. All issues be kept open including the objections of the original opponent that the application under Section 5(2) is not in conformity with the prescription of law and there is an issue of delay involved.

4 In view of the above, this Writ Petition is partly allowed. Though the order of the Revisional Authority is sustained, the following direction is being issued :-

"Rasta Case No.2010/Jama-1/ Rasta/ kavi/ pra.kra.1 shall stand restored to the file of the Tahasildar, Taluka Gangapur for a fresh hearing."

5 In view of the above, the parties shall appear before the concerned Tahasildar on 29.04.2019 at 11:00 am. The Tahasildar shall decide the dates for carrying out the spot inspection, panchanama and all other connected steps to be taken by him. The litigating sides would scrupulously follow the said dates and would avoid remaining absent on the dates fixed by the Tahasildar for spot inspection, panchanama and other purposes, lest face the consequences.

6 Needless to state, all contentions of the litigating sides are

kept open and the Tahasildar shall decide the said proceedings by delivering a reasoned order preferably on or before 15.06.2019.

kps

(RAVINDRA V. GHUGE, J.)