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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.96 OF 2019

Sachin Jaywant Patil & Anr.

..Petitioners.

V/s.

Kamlakar Halya Baswat & Ors.

..Respondents.

Smt. Neeta Karnik for the petitioners.

Mr.C.D.Mali, AGP for respondent Nos.8(1) & 8(2).

CORAM: NITIN W.SAMBRE, J.

DATE : JULY 4, 2019

P.C.:-

Respondents through are served have chosen not to appear in this proceeding. As such, this Court is required to deal with the matter with the assistance of the learned Assistant Government Pleader and learned counsel for the petitioners.

2. The respondents herein preferred a revision dated April 3, 2018 seeking removal of encroachment on the public way which was passing through the land of the present petitioners.

3. The Tahsildar under section 5 of the Mamlatdar Courts Act ('the Act' for short) conducted an inquiry in the matter and by

the order impugned dated June 22, 2018 passed a declaration against the petitioners whereby directing the removal off the compound wall to the extent of 5 ft. width so also directed petitioner No.2 to remove the barbed wire fencing to the extent of 5 ft width.

4. The petitioners, feeling aggrieved preferred an appeal before the Sub-Divisional Officer being Appeal No.3/2018 pursuant to the provision of sub-section (2) of section 23 of the Act which came to be dismissed by the impugned order dated November 20, 2018. As such, this petition.

5. Heard Ms.Neeta Karni, learned counsel for the petitioners and learned Additional Government Pleader.

6. My attention is invited to the fact that when the plaint in question was pending in the Court of learned Tahsildar, he caused notice to be issued to the petitioners on June 14, 2018 making same returnable on June 19, 2018. According to her, if the roznama of the matter is perused, on June 19, 2018 i.e. on the returnable date, there is an overwriting in the date of hearing. She submits that initially June 25, 2018 was mentioned which was later corrected to June 24, 2018. The submissions are, the site

inspection was fixed on June 21, 2018. Without there being any notice of hearing or of advancing of the date, the matter came to be closed for orders on June 22, 2018 by the Mamlatdar. The submissions are, apart from above, the fact that there is a denial of opportunity of hearing by the Mamlatdar as provided under subsection (14) of section 5 of the Act, which contemplates a notice of not less than ten days to the defendants before the Mamlatdar. As such, the order impugned is not sustainable.

7. Learned AGP supported the order impugned as according to him, after the site inspection, the Tahsildar passed the order or removal of encroachment. According to him, the petition is liable to be dismissed.

8. Having considered rival submissions, from the copy of the rozanama produced on record which is submitted by learned counsel for the petitioners, it could be noticed that there is a overwriting on the date which was fixed for hearing on June 19, 2018. Apart from above, once the matter was posted for further hearing on 24/26 June, 2018, in absence of any notice of advancing of the date of hearing to the petitioners, the Mamlatdar should not have closed the matter for order on June 22, 2018

particularly when the period is contemplated under section 14 of the Act was not exhausted and opportunity of hearing is to be offered.

9. In the aforesaid backdrop if both the orders viz. the order of the Mamlatdar and the appellate authority are not sustainable. As a consequence of above, both the orders impugned, in my opinion, are not sustainable and are liable to be quashed and set aside.

10. As such, writ petition stands allowed in terms of prayer clause (a).

11. It is directed that the Mamlatdar shall decide the claim afresh after giving opportunity of hearing to all the parties concerned.

(NITIN W.SAMBRE, J.)