

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

Writ Petition No.4320 of 2016

**(Dattatraya Vitthalrao Dhawad through POA .vs. Vishnu Mahadeo Sawarkar
and others.)**

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders.

Mr. P.R. Agrawal, Advocate for Petitioner.

Mr. K.P. Mahalle, Advocate for Respondent Nos. 1 to 7.

Mr. S.B. Bissa, AGP for Respondent Nos. 8 & 11.

CORAM : Manish Pitale, J.

DATED : April 02, 2019.

By this writ petition, the petitioner (original non-applicant) is challenging concurrent orders passed by the Mamlatdar/Tahsildar and the Collector in favour of respondent nos. 1 to 7 (original applicants), whereby existence of a customary way claimed by the said respondents has been accepted and the petitioner has been directed to remove obstruction from use of the same by the said respondents.

2. One of the arguments raised on behalf of the petitioner is that the manner in which the proceedings were conducted by the two authorities below demonstrated that there was violation of the principles of natural justice as the petitioner was not granted sufficient opportunity to place his case for consideration. It has come on record that there are two conflicting reports of the Circle Officer on record. It has also come on record that respondent Nos. 1 to 7 have been

actually using the said way after the two authorities below have passed orders in their favour. There are documents placed on record on behalf of the said respondents to show that at least for the past about three years, the said respondents have been using the said way for access to their agricultural fields.

3. In this situation, it would be in the interest of justice that the Mamlatdar/Tahsildar is directed to reconsider the contentions of the rival parties by granting proper opportunity to them to put forth their claims with supporting material.

4. In view of the above, **the writ petition is partly allowed** and the impugned orders are quashed and set aside. The Mamlatdar/Tahsildar is directed to reconsider the matter by giving proper opportunity to the rival parties to support their claims. Since respondent nos. 1 to 7 have been using the aforesaid way for access to their agricultural fields for a period of about three years in view of the impugned orders passed by the authorities below, it is directed that they shall be permitted to continue to use the said way during the pendency of the proceedings as remanded by this Court before the Mamlatdar/Tahsildar.

JUDGE