

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

WRIT PETITION NO. 521 OF 2020

Mennath Sitaram Jaygude and Others

..PETITIONERS

VERSUS

State of Maharashtra and Others

..RESPONDENTS

....

Mr. V.P. Narwade, Advocate for petitioners

Mr. S.P. Tiwari, A.G.P. for respondent – State

Mr. N.B. Narwade, Advocate for respondent nos. 4 and 5

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CORAM : R.G. AVACHAT, J.

DATED : 27th JANUARY, 2021

PER COURT :

1. The challenge in this writ petition is to order dated 26th December, 2018 passed by Tahsildar, Newasa in Rasta (Way) Case No. 65 of 2017 and the order passed by Deputy Collector, Land Acquisition No.3, Ahmednagar in Revision Application No. 2 of 2019 on 21st September, 2019.

2. The petitioners are the original applicants before the Tahsildar/Mamlatdar in Rasta Case No. 65 of 2017. It was a proceeding initiated under Section 5(2) of Mamlatdar's Courts Act, 1906 ('the Act'). The petitioners have been unsuccessful before the Tahsildar/Mamlatdar in the said case and before the Deputy Collector in revision preferred there against.

3. Learned counsel for the petitioners would submit that the Tahsildar/Mamlatdar decided the case without offering the petitioners an opportunity to cross-examine the contesting respondents and their witnesses, if any. The proceedings under Section 5(2) of the Act are in the nature of a suit. Provisions of Section 135 to 138 of the Indian Evidence Act are applicable to the proceedings under Section 5 of the Act. Learned counsel, therefore, urged for setting aside the impugned orders with the direction to the Tahsildar/Mamlatdar to give the petitioners an opportunity to cross-examine the contesting respondents and their witnesses, if any.

4. Learned counsel for the contesting respondents would, on the other hand, submit that the petitioners before the Tahsildar/Mamlatdar and even before the Deputy Collector did not ask for permission to cross-examine the contesting respondents. Learned counsel took me through the proceedings before the Tahsildar/Mamlatdar, to ultimately submit that the impugned order has rightly been passed and affirmed in revision as well.

5. I have considered the rival submissions. Perused the impugned orders and gone through the record and proceedings. The provisions under Section 5 of the Act are in the nature of a civil suit. In case of ***Sudhir Yashwant Dhangade Vs. Ankush Kashiram Bole and Others 2019 DGLS (Bom.) 176*** it has been observed that -

“9. Sub-section (2) of section 5 confers powers on the Mamlatdar to issue injunction. Sub-section 3 prescribes the period of limitation for filing of the suit under section 5 of the Act and sub-section (4) of section 5 relates to the cause of action. Sections 14 to 19 prescribe procedure to be followed by the Mamlatdar when the plaint is admitted. Sections 15, 16 and 19 of the Act confer specific powers on the Mamlatdar to summon and examine witnesses, to inspect the property in dispute and to record his findings on the issues raised in the plaint.

10. It is thus evident that the Act specifically confers powers on the Mamlatdar to record evidence. Hence, the Court presided over by the Mamlatdar, would be a ‘Court’ within the meaning of section 3 of the Indian Evidence Act and provisions of sections 135, 136, 137 and 138 of the Indian Evidence Act would be applicable to the proceedings under section 5 of the Mamlatdars Court Act.”

6. The record indicates the Tahsildar/Mamlatdar to have recorded statements of the contesting respondents. Since the provisions of Sections 135 to 138 of the Indian Evidence Act are applicable to the proceedings under Section 5 of the Act, the petitioners have right to cross-examine the contesting respondents and their witnesses, if any. The Tahsildar/Mamlatdar ought to have enquired the petitioners as to whether they proposed to cross-examine the contesting respondents and their witnesses, if any. The record does not indicate that the parties were represented by legal practitioner in the proceeding before the Tahsildar/Mamlatdar. Unless evidence of the

witness is tested on cross-examination, the same is not allowed to be read in evidence against a party, who did not have any opportunity to cross-examine the witness.

7. Without going into the merits of the matter, the impugned orders deserve to be set aside merely on the ground that the petitioners having not been offered an opportunity to cross-examine the contesting respondents and their witnesses, if any, whose evidence is against the interest of the petitioners.

8. In this view of the matter, writ petition is allowed in terms of prayer clauses (A) and (B). The matter is remitted back to the Tahsildar/Mamlatdar, Newasa with direction to decide the matter on its own merits after giving the parties thereto an opportunity to lead evidence, oral and documentary, and cross examine the witnesses of each other, if any. Writ petition is disposed of accordingly.

(R.G. AVACHAT, J.)

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