

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

WRIT PETITION NO.2162 OF 2020

1. Sanjay S/o Mohan Dhage,
Age: 47 years, Occu. : Agril.,
R/at : Ghatambir, Tq. Sillod,
Dist. Aurangabad.

2. Vijay S/o Mohan Dhage,
Age: 40 years, Occu. : Agril.,
R/at : Ghatambir, Tq. Sillod,
Dist. Aurangabad.

... Petitioners

Versus

1. The Dy. Collector,
Aurangabad, Aurangabad.

2. The Tahsildar,
Sillod, Tq. Sillod,
Dist. Aurangabad.

3. Vishwanath S/o Sheku Sultane,
Age: --- years, Occu. : Agril.,
R/o at: Ghatambir, Tq. Sillod,
Dist. Aurangabad.

4. Tejrao s/o Shephadu Jawale,
Age: --- years, Occu. : Agril.,
R/o at: Ghatambir, Tq. Sillod,
Dist. Aurangabad.

5. Prabhu s/o Ramchandra Jawale,
Age: --- years, Occu. : Agril.,
R/o at: Ghatambir, Tq. Sillod,
Dist. Aurangabad.

6. Ramlal s/o Bankarlal Jaiswal,
Age: --- years, Occu. : Agril.,
R/o at: Ghatambir, Tq. Sillod,
Dist. Aurangabad.

... Respondents

...

Advocate for Petitioners : Mr. R. P. Bhumkar
AGP for Respondent Nos. 1 & 2 – State : Mr. S. N. Kendre
Advocate for Respondent Nos. 3 to 6 : Mr. S. N. Lute

...

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 04th JANUARY, 2022

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard finally with the consent of the parties.
2. This petition takes exception to the order dated 04-09-2019, passed by respondent No.2 – Tahsildar, Sillod, thereby allowing the application filed by respondent Nos. 3 to 6, under Section 5 of the Mamlatdars Courts Act, 1906 (for short 'the Act, 1906'). The said order is confirmed in revision by respondent No.1 – Deputy Collector vide order dated 17-01-2020.
3. Respondent Nos. 3 to 6 herein filed application under Section 5 of the Act, 1906, before respondent No.2 on 24-06-2019 seeking removal of obstruction to their right of way from the petitioners' Gat Nos. 111 and 112 situated at village Ghatambir, Tq. Sillod, Dist. Aurangabad. On 25-06-2019, site inspection panchanama was drawn. However, the petitioners were not present on that day during the said site inspection. The petitioners' signature does not appear on the said

panchanama. On the same date i.e. on 25-06-2019, report is submitted by the Circle Officer thereby stating that the petitioners have obstructed East West way by plowing and sowing on the same. On the basis of the said panchanama, respondent No.2 – Tahsildar passed the impugned order thereby allowing the application filed by the respondents and directing petitioners to remove obstruction caused by him on the right of way of the respondents. The petitioners challenged the order passed by the Tahsildar before the Deputy Collector, who confirmed the same. Hence, the present petition.

4. Heard the learned advocate Mr. R. P. Bhumkar for the petitioners, the learned advocate Mr. S. N. Lute for respondent Nos. 3 to 6, the learned Assistant Government Pleader Mr. S. N. Kendre for respondent Nos. 1 and 2 – State.

5. The learned advocate for petitioners submits that the impugned order is passed by the Tahsildar without giving an opportunity of hearing to the petitioners. The panchanama was held in a haste, in absence of the petitioners and the principles of natural justice are violated while passing the impugned order. The Deputy Collector has failed to appreciate these aspects and has erroneously dismissed the revision filed by the petitioners. He, therefore, states that the petition may be allowed by setting aside the impugned order passed by the

Tahsildar.

6. Per contra, the learned advocate for respondent Nos. 3 to 6 vehemently opposed the petition contending that the petitioners have obstructed way of almost 35 agriculturists and sufficient opportunity of being heard was given to the petitioners. He submits that the site inspection panchanama clearly states that the petitioners have obstructed right of way of the respondents. He, therefore, submits that there is no merit in the petition and the petition may be dismissed.

7. The learned Assistant Government Pleader by pointing out Roznama maintained by the Tahsildar submitted that the petitioners were heard before passing the impugned order. Therefore, there is no substance in the contention raised by the petitioners that there is violation of principles of natural justice. The petition is, thereafter, liable to be dismissed.

8. Perusal of the impugned order indicates that though the notices were issued to the petitioners, it is mentioned that the petitioners have not submitted any written say and no evidence was produced by the petitioners. It is also a matter of record that at the time of site inspection panchanama the petitioners were not present. It appears that the petitioners were not given any notice at the time of site inspection. The application under Section 5 was filed on 24-06-2019 and

immediately on the next date site inspection panchanama was drawn. Why such haste is made by the the respondents is not explained by the respondent authorities. Taking into consideration these aspects respondent No.2 was not justified in passing the impugned order. In this view of the matter, the impugned order cannot sustain and the same is hereby quashed and set aside.

9. The matter is remanded back to respondent No.2 – the Tahsildar, Sillod, Aurangabad, who shall direct fresh site inspection and shall pass appropriate orders after hearing all the concerned parties, within a period of eight weeks from the date of receipt of writ of this order.

10. During the pendency of the proceedings before respondent No.2 – Tahsildar, Sillod, Aurangabad, the parties shall maintain the status quo.

(NITIN B. SURYAWANSHI, J.)