

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

WRIT PETITION NO.2898 OF 2022

**SMT. SANGITA RAMESH BADA AND ANOTHER
VERSUS
NIVRUTI ASARAM KADAM AND OTHERS**

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Advocate for Petitioners : Mr. Narendra D. Sonavane
AGP for Respondents – State : Mr. P. N. Kutti
Advocate for Respondent Nos. 1, 3, 6, 7, 15,16 & 18 : Mr. B. G. Sagade

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 28th FEBRUARY, 2022

PER COURT :

1. The petitioner is aggrieved by the order dated 11-06-2021, passed by the Tahsildar, Vaijapur, in proceedings filed under Sections 5 and 5(2) of the Mamlatdars' Courts Act, 1906 (For short "the Act, 1906"). The respondents filed the said proceedings claiming right of customary way which according to them was dug by the petitioners. The petitioners resisted the claim of the respondents contending that there are two alternate ways available to the respondents. The Panchanama was conducted on 01-06-2021. Along with the Panchanama three rough sketches of the spot were prepared. By the impugned order, the Tahsildar has allowed the proceedings filed by the respondents and directed to remove the obstructions allegedly caused by the petitioners, within a period of seven days from the date of order. It is pertinent to

note that the Tahsildar has, in the impugned order, only set out facts and contentions of the rival parties and the narration of Panchanama. Without discussing the rival contentions, without framing points as per Section 19 of the said Act, 1906 and without recording findings on the said points, the Tahsildar has proceeded to allow the proceedings filed by the respondents.

2. The petitioners being aggrieved by the order passed by Tahsildar, Vaijapur, approached the Additional Collector, (Rehabilitation), Aurangabad, by filing revision under Section 23(2) of the said Act, 1906. The Additional Collector without considering that the prescribed procedure mentioned in the said Act, 1906 is not followed by the Tahsildar, has proceeded to dismiss the revision.

3. Heard the rival submissions of the contesting parties and the learned Assistant Government Pleader for the State.

4. It is clear from the impugned order passed by the Tahsildar that the prescribed procedure under the said Act, 1906 is not followed and therefore, the impugned order is unsustainable in law and facts of the present case.

5. In the result, the writ petition is allowed in terms of prayer

clause 'A'. The impugned order dated 11-06-2021, passed by the Tahsildar, Vaijapur, in Rasta Case No.69/2021 and the judgment and order dated 23-12-2021 passed by the Additional Collector (Rehabilitation), Aurangabad, in C.R. No.28/2021, are hereby quashed and set aside.

6. The matter is remanded back to the Tahsildar, Vaijapur, who shall take decision in the proceedings filed by the respondent Nos. 1 to 18 after giving them sufficient opportunity of hearing and after framing points and recording findings on the said points, within a period of two months from the date of this order. In the meanwhile, the parties shall maintain the status quo.

(NITIN B. SURYAWANSHI, J.)