

drp

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4862 OF 2021

Babasaheb Limbraj Andhare

PETITIONER

VERSUS

Sub Divisional Officer and Others

RESPONDENTS

.....

Mr. Sushant B. Chaudhari, Advocate for the petitioner

Mr. S. W. Munde, AGP for respondent - State

Mr. Anup Nikam, Advocate for respondents No. 3 to 13

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 9th JUNE, 2022

ORDER :

1. The petitioner is aggrieved by the order passed by the Tahsildar, Bhoom, under section 5 of the Mamlatdars' Courts Act (hereinafter for short "the said Act"), thereby allowing the application filed by respondents No. 3 to 13 and directing the petitioner to remove the obstruction. Said decision was challenged by the petitioner before the Sub Divisional Officer by filing Revision under section 23 (2) of the said Act. The Sub Divisional Officer, thereafter called upon the respondents to file their replies.

2. Roznama dated 5th March, 2020 of the proceedings before

the Sub Divisional Officer, indicates that the Sub Divisional Officer had directed the Tahsildar to prepare a fresh *Panchanama* and place the same on record.

3. It appears from the record that no such *Panchanama*, in terms of the directions dated 5th March, 2020, is prepared and the Sub Divisional Officer has proceeded to decide the matter on merits by taking into consideration earlier *Panchanama* dated 7th February, 2018.

4. The impugned order does not, in any manner, disclose as to why fresh *Panchanama*, as directed by the Sub Divisional Officer, is not prepared and placed on record and why the Sub Divisional Officer has proceeded to decide the matter on merits without obtaining fresh *Panchanama* as directed by him.

5. The impugned order, therefore suffers from non application of mind and since no fresh *Panchanama* in terms of the directions of the Sub Divisional Officer is placed on record, the Sub Divisional Officer was not justified in deciding the matter on merits.

6. In that view of the matter, the impugned order dated 24th January, 2021 passed by the Sub Divisional Officer, Bhoom is hereby quashed and set aside and the matter is remanded back

to the Sub Divisional Officer for fresh decision on merits in accordance with law, after obtaining fresh *Panchanama* as directed by the Sub Divisional Officer. The proceedings shall be decided by the Sub Divisional Officer within a period of four weeks from the date of receipt of fresh *Panchanama*.

7. Writ petition is accordingly disposed of.

[NITIN B. SURYAWANSHI]
JUDGE

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