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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.10670 OF 2021

Sanjay Pandurang Deshmukh and Others

PETITIONERS

VERSUS

The State of Maharashtra and Others

RESPONDENTS

Mr. Ravindra M. Deshmukh, Advocate for the petitioners

Mr. Y. G. Gujrathi, AGP for respondent - State

Mr. Vinod Prakash Patil, Advocate for respondent No.5

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 19th SEPTEMBER, 2022

ORDER :

1. The petitioners are aggrieved by the order passed by the Tahsildar under section 5 of the Mamlatdars' Court's Act, which is confirmed by the Sub Divisional Officer in Revision.
2. Having heard learned advocate for the petitioners and learned advocate for the respondent and the learned Assistant Government Pleader and on perusal of the impugned orders, it is clear that reasonable and fair opportunity of hearing is not given to the petitioners.
3. There are no documents on record to show that the

respondents have proved their case, by leading any evidence. The last date on which the Tahsildar has closed the matter for judgment is 4th January, 2019. *Roznama* of the said date indicates that on that date the respondents and their advocate and the petitioner were present, however, it is not clear that any hearing was conducted on that day. The impugned order passed by the Tahsildar is said to be based on the documents and site inspection map. However, the contentions of both the parties are not taken into consideration, while passing the impugned order.

4. Learned advocate for the respondent No.5 submits that the alternate way, which the petitioners claim that is available to the respondent is 8 k.m. long. Even this contention is not substantiated on record by leading any evidence.

5. Though the contention that reasonable and fair opportunity was not given to the petitioners was raised before the Sub Divisional Officer in the Revision, however, the same is lightly brushed aside, holding that the said contention is raised only to prolong the matter.

6. In the light of the fact situation, this Court is of the opinion that the impugned orders passed by the Tahsildar and the Sub Divisional Officer are liable to be quashed and set aside and the

matter is required to be remanded back to the Tahsildar.

7. In the result, the writ petition is allowed. The impugned orders passed by the Tahsildar and the Sub Divisional Officer are quashed and set aside. Vahiwat Case No. SR-37 of 2018 is relegated back to the Tahsildar for fresh consideration on merits. Both the parties shall be given opportunity of hearing and leading evidence. The parties to appear before the Tahsildar on 28th September, 2022. All the contentions of the respective parties are kept open.

8. The matter shall be decided by the Tahsildar within a period of six weeks from the date of first appearance of the parties.

[NITIN B. SURYAWANSHI]
JUDGE