

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

WRIT PETITION NO.8304 OF 2020

**VAIBHAV RAJENDRA SHENDGE AND ANOTHER
VERSUS
THE ADDITIONAL COLLECTOR AND OTHERS**

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Advocate for Petitioners : Mr. Bobade Yogesh K
AGP for Respondent Nos.1, 2 & 9/State: Mr. S. N. Kendre
Advocate for Respondent No.3: Mr. M. B. Kolpe

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 21st April, 2022

ORDER :

1. The petitioners are aggrieved by the impugned order passed by respondent no.2/Tahsildar in Proceeding No.2020/Mahasul/Kavi-249/Jama-2/MCAS-23 filed by respondent no.3 under Section 5 of the Mamlatdar's Courts Act, 1906 (for short "the said Act"), and the order which is passed by respondent no.1/Additional Collector in Revision No.2020/Appeal/ROR/KAVI confirming the same.

2. The petitioners have challenged the impugned order passed by respondent no.2 on the ground that no proper opportunity of hearing was given to them. The petitioners though sought time to file his say and documents, respondent no.2 has rejected the application filed by

the petitioners to that effect and passed the order in favour of respondent no.3. The petitioners further contend that the plaint filed by respondent no.3 was not in accordance with Section 7 of the said Act and provisions of Sections 8 and 9 of the said Act are not complied with by respondent no.2 at the time of adjudicating the proceedings filed by respondent no.3. At the time of site inspections panchnama, signatures of the petitioners, respondents or any witnesses are not obtained. The proceeding was filed beyond limitation of six months and respondent no.2 has violated the provisions of Section 14(2) of the said Act. Hence, they seek setting aside of the impugned order passed by respondent no.2 and the order confirming it, passed by respondent no.1.

3. The learned Advocate for the respondent no.3, on the other hand, supports the impugned orders. He states that though the petitioners have filed Regular Civil Suit No.639/2020 seeking a relief of injunction against respondents, no interim relief is granted in favour to the petitioners in the said suit. He sought to rely on the measurement map placed on record at page-90 of the petition. According to him, the road which was obstructed by the petitioners is clearly visible in the said map. He further submits that since Section 7

of the said Act is already complied with, there is no question of complying with Sections 8 & 9 of the said Act. By pointing out the revision memo filed by the petitioners before respondent no.1, he submits that the petitioners and respondent no. 3 were present when the spot inspection was done and the panchnama was carried out. He, therefore, submits that there is no substance in the petition and the petition may be dismissed.

4. The learned Assistant Government Pleader by relying on the affidavit-in-reply filed by respondent nos.1 and 2 supported the impugned orders. He has also made available the record and proceedings of the matter.

5. Perused the record. It is clear from the record that the proceedings under Section 5 of the said Act is filed by respondent no.3 on 12/06/2020. Pursuant to the notice, the petitioners appeared before respondent no.1 on 19/06/2020 and submitted an application seeking time to file say. On the same day, the said application filed by the petitioners is rejected by respondent no.2 on the ground that there is no need of any document for deciding the proceeding filed by respondent no.3. Section 14(2) of the said Act lays down procedure to be followed by the Tahsildar while deciding the proceedings filed

under Section 5 of the said Act. Sub-Section 2 of Section 14 of the said Act mandates that Tahsildar has to fix a date for the trial of the case, not earlier than ten days and not later than fifteen days, from the date on which, the notice is issued. In the present case, the plaint is filed on 12/06/2020 and the Tahsildar/respondent no.2 has fixed the matter on 19/06/2020, which is in contravention of Sub-Section 2 of Section 14 of the said Act.

6. It is further clear that though the petitioners sought time to file say, the said request is erroneously rejected. Thus the petitioners are not given sufficient opportunity of hearing by respondent no.2, at the time of deciding the proceeding filed by respondent no.3. On this ground also, writ petition deserves to be allowed. In the result, following order is passed:

ORDER

(a) Writ Petition is allowed in terms of prayer clause "C".

(b) The impugned order passed by respondent no.1 in revision No.2020/Apeal/ROR/KAVI and passed by respondent no.2 in proceeding No.2020/Mahasul/Kavi-249/Jama-2/MCAS-23, are hereby quashed and set aside.

(c) The matter is remanded back to respondent no.2/Tahsildar for fresh decision on merits. The respondent no.2 shall decide the matter afresh after giving opportunity of hearing to both the parties and the matter should be decided within three months from the date of receipt of this order.

(d) Till the respondent no.2 decides the matter on merits, the parties shall maintain *status-quo* as on today.

7. At this stage, learned Advocate for respondent no.3 makes a grievance that his sugarcane crop is ready for harvesting, and as the petitioners have blocked the customary way, he is not in a position to harvest the sugarcane crop. The petitioners are directed to give access way to respondent no.3 so as to enable him to harvest and carry away sugarcane crop.

[NITIN B. SURYAWANSHI, J.]

Sameer