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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.10993 OF 2021

Ayyub Sandu Shaikh and Another

PETITIONERS

VERSUS

The State of Maharashtra and Others

RESPONDENTS

.....

Mr. Adinath B. Jagtap, Advocate for the petitioners

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

Mr. Yuvraj V. Kakade, Advocate for Respondents 6, 7, 10 and 11

Mr. P. R. Nangare, Advocate for respondents No.4, 5, 8 and 9

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 15th SEPTEMBER, 2022

ORDER :

1. Challenge in this petition is to the order dated 12th March, 2021 passed by Tahsildar, Pathardi under section 5 of the Mamlatdar's Courts Act (for short "the said Act"), which is confirmed in Revision, by Sub Divisional Officer, Pathardi.

2. Learned advocate for the petitioners has assailed the impugned order contending that the plaint filed by the respondents was not in conformity with section 7 of the said Act. The procedure to be followed under sections 9 to 11 of the said

Act is not followed in the present case. Further submission is that at the time of conducting *Panchanama*, notice was given to the petitioners that the *Panchanama* would be conducted on 15th December, 2020, but the same was conducted on 16th December, 2020 and at that time, the petitioners were not present. The impugned order, according to him, therefore, cannot be sustained.

3. Learned advocates for the respondents, on the other hand, supported the impugned order contending that the impugned order is passed on the basis of spot inspection *Panchanama* and the contentions raised by the respondents in the plaint.

4. Learned Assistant Government Pleader also supports the impugned order. Learned Assistant Government Pleader has made available the record of the case.

5. On perusal of the record, it is clear that the plaint filed by the respondents before the Tahsildar is not in conformity with section 7 of the said Act and the procedure contemplated under sections 9 to 11 of the said Act is not followed while entertaining the plaint. The *Panchanama* was to be conducted on 15th December, 2020 and notice to that effect was given to the concerned parties, however, there is no notice / intimation about

change of the said to 16th December, 2020, on record. The respondents have tried to justify conducting of the *Panchanama* on 16th December, 2020, by making a statement in the affidavit in reply that it was intimated on phone to the parties that the *Panchanama* would be conducted on 16th December, 2020. The said statement cannot be accepted, in absence of anything on record.

6. Considering all these aspects, this Court is of the opinion that the impugned orders cannot be sustained in the facts of the present case and they are liable to be quashed and set aside and are accordingly set aside.

7. The matter is remanded back to the Tahsildar to be considered on merits after giving opportunity to the parties concerned to contest their respective claims. The respondents will be entitled to file proper plaint, on the same cause of action, along with verification. The petitioners shall be entitled to oppose the said plaint by filing written statement / say. *Panchanama* shall be conducted by the Tahsildar in presence of all the concerned parties, after giving notice in advance. After conducting the *Panchanama* and after giving opportunity of hearing to the parties, the matter shall be decided in accordance with law, within a period of eight weeks from the date of receipt

of writ of this order. Till then the parties shall maintain *status quo*.

8. With aforesaid observations, the writ petition is disposed of.

[NITIN B. SURYAWANSHI]
JUDGE

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