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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.10959 OF 2019

Alkabai Kondiba Borase

PETITIONER

VERSUS

The State of Maharashtra and Others

RESPONDENTS

.....

Mr. Chetan T. Jadhav, Advocate for the petitioner
Mrs. G. L. Deshpande, AGP for respondent - State
Mr. R. V. Gore, Advocate for respondent No.2

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 15th JUNE, 2022

ORDER :

1. This petition, filed under Article 226 of the Constitution of India, takes exception to the order passed by Tahsildar, Phulambri in Matter Sr. No. Way/248/2011 confirmed by Additional Collector, Aurangabad in Appeal No. 2012/Appeal/M<amlatdar/CR-15.

2. Having heard learned advocate for the petitioner, learned advocate for respondent No.2 and learned Assistant Government Pleader for respondent State and after going through the original record of the matter, it appears that application under section 5 of the Mamlatdars' Courts Act was filed on 1st July, 2011,

pursuant to which local inquiry and site *Panchanama* was conducted on 12th July, 2011. There is also site *Panchanama* dated 16th November, 2011 on record. The Tahsildar has taken into consideration, the *Panchanama* dated 16th November, 2011 while deciding the case against the petitioner. The Additional Collector has confirmed the order passed by the Tahsildar and directed the petitioner to remove obstruction and give right of way.

3. In the *Panchanama* dated 12th July, 2011, existence of way is mentioned, whereas in the *Panchanama* dated 16th November, 2011, existence of way is not mentioned. The statements of the adjoining land owners, recorded at the time of drawing *Panchanama* dated 16th November, 2011 are to the effect that they are ready to give way from their respective fields. Even these statements do not indicate that there was any way in existence, which was being used.

4. The Tahsildar, in the impugned order, has not taken into consideration the *Panchanama* dated 12th July, 2011 and has relied on the *Panchanama* dated 16th November, 2011. As to why said *Panchanama* dated 12th July, 2011 is not considered, is not clear from the record and the impugned orders.

5. In that view of the matter, the impugned orders passed by the Tahsildar and the Additional Collector are unsustainable and the same are hereby quashed and set aside. The matter is remanded back to the Tahsildar for decision afresh, on merits in accordance with law. The Tahsildar shall consider the matter, afresh on merits, if necessary by drawing fresh *Panchanama* and local inquiry and decide the matter on merits, after affording opportunity of hearing to the parties concerned.

6. This exercise shall be completed within a period of three months from the date of receipt of writ of this order.

7. With aforesaid observations, writ petition is disposed of.

[NITIN B. SURYAWANSHI]
JUDGE