

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

WRIT PETITION NO.12066 OF 2021

**ARUN PRUTHVIRAJ SHRIKHANDE
VERSUS
THE SUB DIVISIONAL OFFICER, PARBHANI AND OTHERS**

...
Advocate for Petitioners : Mr. Ravindra Vitthal Gore
AGP for Respondents – State : Mr. Y. G. Gujrathi
Advocate for Respondent Nos. 5 to 8 : Mr. V. B. Anjanwatikar
...

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 27th JULY, 2022

PER COURT :

1. The petitioner is aggrieved by the order dated 09/07/2021 passed by Tahsildar, Parbhani in case No. 2021/Jamabandi-1/Rasta/Kavi-482, thereby allowing the application filed by respondent Nos. 5 to 8 under Section 5(2) of the Mamlatdars' Courts Act, 1906 (for short 'the said Act') and directing petitioner to remove obstruction caused by him. The decision of Tahsildar is unsuccessfully challenged by the petitioner in revision filed before Sub Divisional Officer, Parbhani.

2. Heard learned advocate for petitioner, learned advocate for respondents No.5 to 8 and the learned Assistant Government Pleader for respondents – State, who has produced original record.

3. Perusal of the record reveals that simple application was

filed by respondent Nos. 5 to 8 seeking removal of obstruction caused by petitioner in Gut No.208. Tahsildar without verifying the said application as per Section 10 of the said Act and without following procedure under Section 11 of the said Act, proceeded to decide the application. Record further indicates that no opportunity of hearing was given to the petitioner. Though the petitioner filed his say on 28/06/2021, his contentions are not reflected in the impugned order. Only statements of adjacent agricultural land owners and two panchanamas were considered by the Tahsildar. Also, no opportunity to cross-examine the witnesses, whose statements were recorded, was given to the petitioner by Tahsildar while passing the impugned order.

4. Order passed by Tahsildar was challenged by the petitioner by filing revision under Section 23(2) of the said Act, raising specific ground that no opportunity of hearing was given to the petitioner. Sub Divisional Officer, Parbhani, dismissed revision filed by the petitioner. However, while doing so, he has not considered the fact that petitioner was not given opportunity of hearing. Both the impugned orders, therefore, cannot be sustained as the Tahsildar has failed to follow procedure under Sections 10 and 11 of the said Act, and as no opportunity of hearing was given to the petitioner.

5. For the aforesaid reasons, following order:-

- (I) Writ petition is allowed.
- (II) Impugned order passed by Tahsildar, Parbhani in case No. 2021/Jamabandi-1/Rasta/Kavi-482 as well as the order passed by Sub Divisional Officer, Parbhani in Revision Petition No.50/2021, are hereby quashed and set aside.
- (III) The matter is remanded back to Tahsildar, Parbhani, who shall follow the mandate of Sections 10 and 11 of the said Act and give opportunity of hearing to the petitioner.
- (IV) Tahsildar, Parbhani, shall decide the matter afresh on the basis of record, from the stage of giving opportunity of cross-examination of persons whose statements are recorded earlier, to the petitioner.
- (V) Tahsildar shall decide the matter within a period of three weeks from the date of receipt of this order.
- (VI) Parties are directed to cooperate.

(NITIN B. SURYAWANSHI, J.)