

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

WRIT PETITION NO. 13976 OF 2021

Rohit Suryakant Thakar & Ors.

...Petitioners

Versus

The State of Maharashtra & Ors.

...Respondents

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Mr. D. V. Tele, Advocate for the petitioners

Mr. K. B. Jadhavar, AGP for respondent / State

Mr. S. S. Bhise, Advocate for respondent nos. 4 & 5

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CORAM : BHARATI H. DANGRE, J.

DATE : JANUARY 25TH, 2022

PER COURT : -

1. On hearing the learned Counsel for the petitioners, the respondents and the learned AGP. It is apparent that the Naib Tahasildar, Kallamb as well as the Sub-Divisional Officer, Kallamb has failed to take into account the panchanama drawn on 29.12.2020, which reflect the position existing *qua* gut nos. 41 and 42 belonging to the petitioner and gut no. 43 belonging to the respondent. The finding rendered by the first authority which has been upheld by the second authority i.e. the Sub-Divisional Officer is in utter ignorance of the said panchanama, which clearly give an indication that the dotted line passing through gut nos. 41 and 42 as

shown in the map do not exist as on date. Further, another road for access is also shown available to plot no. 43 in the said panchanama.

2. Since the panchanama depict the position on the ground, it was necessary for both the authorities to advert to the same instead of deciding the application on the basis of the pleadings. Since the same is not adverted to by the appellate authority as well as the first authority, the impugned order passed by the Naib Tahasildar dated 17.03.2021 is quashed and set aside and the proceedings are remanded to the Tahasildar, Kallamb to determine the application filed by the respondent by specifically making reference to the existing position as reflected in the panchanama dated 29.12.2020.

3. Let the entire exercise be carried out within a period of eight weeks from today. Since the impugned orders are quashed and set aside, no action against the petitioner shall be contemplated till fresh proceeding is taken out.

[BHARATI H. DANGRE]
JUDGE