

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

WRIT PETITION NO. 3352 OF 2019

Ashok s/o Madhavrao Wankhede

Vs.

Additional Sub-Divisional Officer, Ralegaon, Tah. Ralegaon, Dist. Yavatmal and Ors.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr. S.O. Ahmed, Advocate for petitioner.
Mr. K.L. Dharmadhikari, AGP for respondents/State.
Mr. Virendra D. Darne, Advocate for respondent No.5.

CORAM : MANISH PITALE J.

DATE : 22.03.2022.

By this writ petition, the petitioner has challenged concurrent orders passed by the Naib Tahsildar and Sub-Divisional Officer under the provisions of Mamlatdar's Courts Act, 1906 (for short 'the said Act').

2. The respondent No.5 had moved an application before Naib Tahsildar claiming that the petitioner had illegally obstructed access to her agricultural field. She claimed that such access was available to her and that the action of the petitioner attracted the provisions of the aforesaid Act.

3. The record shows that the respondent No.3-Naib Tahsildar, acting as the Mamlatdar, permitted the application moved by the respondent No.5 to be treated as a plaint under Section 5 of the aforesaid Act. Thereupon, the petitioner was put to notice and proceedings were undertaken. On the basis of a report received from the Circle Officer i.e. respondent No.4 and spot inspection conducted on 06.04.2016, the Naib Tahsildar allowed the application filed by respondent No.5 and directed the petitioner to remove the obstruction on the access way.

4. Aggrieved by the same, the petitioner filed a revision application before the Sub-Divisional Officer, under the provisions of the said Act. It was specifically contended that there was violation of principles of natural justice as the petitioner was not granted opportunity to cross-examine the witnesses who deposed on behalf of respondent No.5. The Sub-Divisional Officer dismissed the revision application, confirming the order passed by the Naib Tahsildar. Aggrieved by the same, the petitioner filed the present writ petition, wherein notice was issued and the respondents appeared through counsel.

5. Mr. Ahmed, learned counsel appearing for the petitioner raised a principal ground of challenge to the concurrent orders passed by the said authorities by inviting attention of this Court to the spot inspection report, contending that the petitioner was never put to notice when such spot inspection was conducted on 06.04.2016. Although adverse inferences were drawn in the report signed by the Naib Tahsildar and the Talathi, there was nothing to show that the petitioner was present at the time of spot inspection. It was also submitted that the Circle Officer submitted a report adverse to the interest of the petitioner without there being anything to show that the petitioner was put to notice in that regard. Attention of this Court was invited to orders passed by the Naib Tahsildar as well as Sub-Divisional Officer to contend that reliance was placed on the aforesaid spot inspection report to hold against the petitioner and that the said authorities failed to realize that the report was prepared behind the back of the petitioner. It was also contended that the Sub-Divisional Officer was not justified in holding that sufficient opportunity was granted to the petitioner to cross-examine the witnesses of respondent No.5. Reliance was placed on the judgment of this Court in the case of *Sudhir Yashwant Dhangade Vs. Ankush Kashiram Bole and Ors. 2019 (1) ALL.M.R.825*.

6. On the other hand, Mr. Darne, learned counsel appearing for contesting respondent No.5 submitted that the contention regarding violation of principles of natural justice in the context of the spot inspection report was never raised before the authorities below. It was submitted that there was sufficient material placed on record by respondent No.5 to show that the access way was available for a number of years and that the said respondent had made out grounds for exercise of power by the Mamlatdar under Section 5 of the aforesaid Act. It was submitted that when the ground pertaining to violation of principles of natural justice was not squarely raised before the Authorities below, it could not be said that the impugned orders deserved interference. It was submitted that the observations made by the Circle Officer and the Naib Tahsildar as well as the Sub-Divisional Officer were in consonance with the evidence and material on record and that therefore, no interference was warranted. It was submitted that since the respondent No.5 had been using the access way for a long period of time and orders were passed by the authorities in her favour, it would be prejudicial to her if the orders are set aside as it would completely block her access way to the agricultural field.

7. Mr. Dharmadhikari, learned AGP appeared on behalf of respondent Nos. 1 to 4 and defended the impugned orders.

8. Heard learned counsel for the rival parties and perused the material placed on record. The principal ground of challenge raised in the present writ petition pertains to violation of principles of natural justice. In order to appreciate the said ground of challenge, this Court has perused the spot inspection report dated 06.04.2016. It is recorded therein that except the petitioner none of the other land owners had any objection to respondent No. 5 using the aforesaid access way.

9. A perusal of the document shows that while signatures of the Naib Tahsildar, Talathi, respondent No.5 and other persons claiming to be adjoining land owners are found on the spot inspection report, there is nothing to show that petitioner signed the said document. There is also nothing on record to show that the petitioner was put to notice before the spot inspection was conducted on 06.04.2016. In other words, observations adverse to the interest of the petitioner were made in the said report while he was not put to notice regarding the spot inspection conducted on

06.04.2016. This clearly violated the principles of natural justice, as the document prepared behind the back of the petitioner was the basis for the Naib Tahsildar as well as Sub-Divisional Officer to reach findings against the petitioner. The report of the Circle Officer submitted to the Naib Tahsildar also made adverse observations against the petitioner. There is nothing to show that the petitioner was put to notice in that regard.

10. A perusal of the record shows that the petitioner had raised a specific ground that he was not granted sufficient opportunity to cross-examine the witnesses of respondent No.5. The Sub-Divisional Officer has observed in the impugned order that when the proceedings were conducted before the Naib Tahsildar, the respondent no.5 was present on a number of occasions, indicating that the petitioner had sufficient opportunity for cross examination. In this connection the learned counsel appearing for the petitioner is justified in relying upon the judgment of this Court in the case of Sudhir Yashwant Dhangade (supra) wherein it has been held that opportunity to cross examine has to be granted even if there is no specific request made for the same, for the reason that the Mamlatdar under the said Act functions as a Court for the purposes of the Evidence

Act. The contention raised on behalf of the petitioner in this regard appears to be justified.

11. In view of above, it is found that the orders passed by the Naib Tahsildar as well as Sub-Divisional Officer in the present case stood vitiated due to violation of principles of natural justice. Both the authorities failed to appreciate that the documents on which they placed reliance to render adverse findings against the petitioner were prepared behind the back of the petitioner.

12. Accordingly, the writ petition is partly allowed. The impugned orders passed by the Naib Tahsildar as well as Sub-Divisional Officer are quashed and set aside. The matter is remanded back to the Naib Tahsildar – respondent No.3, to proceed afresh in the matter. The respondent No.3 shall now proceed on the application moved by respondent No.5, treating it as a plaint under Section 5 of the aforesaid Act. The respondent no.5 shall proceed in consonance with the principles of natural justice and strictly in accordance with law.

13. Parties shall remain present before the respondent No.3 – Naib Tahsildar on 28.03.2022.

14. The respondent No.3 shall dispose of the application filed by respondent No.5, within six weeks from today.

JUDGE

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GABHANE

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