

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

Writ Petition No. 3960 of 2021

Dilip Parashram Khonde,
Aged about – 66 years,
Occupation : Agriculturist,
R/o – Wathoda (Ambikapur)
Tahsil : Arvi, District : Wardha.

... Petitioner

... Versus ...

(1) Prakash Shankarrao Khonde
Aged about – 45 years,
Occupation : Agriculturist,
R/o – Wathoda (Ambikapur)
Tahsil : Arvi, District : Wardha.

(2) Naib Tahsildar, Arvi,
Tahsil Office Arvi,
District : Wardha.

... Respondents

Mr. S. K. Bhoyar, Advocate for the petitioner
Mr. C. R. Najbile, Advocate for respondent no. 1
Mrs. M. A. Barabde, A. G. P for the State/respondent no. 2

CORAM : MANISH PITALE, J.
DATED : 8-9-2022

ORAL JUDGMENT

Heard learned counsel for the parties.

2. Rule. Rule made returnable forthwith.

3. The petitioner is aggrieved by an order dated 25-5-2016 passed by the Naib Tahsildar, Arvi purportedly exercising power under Section 143 of the Maharashtra Land Revenue Code, 1966.

4. The principal contention raised on behalf of the petitioner is that while the impugned order directs grant of way to the applicant before the Naib Tahsildar through the agriculture field belonging to the petitioner, the petitioner and other affected persons were never put to notice in the said proceedings. It is further submitted that in such proceedings that took place behind the back of the petitioner, even if the report submitted by the Circle Officer to the Naib Tahsildar is perused, in the context of prayer made by the applicant before the Naib Tahsildar, it can be seen that field Survey No. 320/3 belonging to the petitioner does not even find mention in the report of the Circle Officer, thereby indicating that the impugned order is wholly unsustainable.

5. Mrs. Barabde, learned Assistant Government Pleader appeared on behalf of respondent no. 2 and Mr. Najbile, learned counsel appeared on behalf of respondent no. 1. They supported the impugned order, on the basis that it was based on reasonable interpretation of material on record.

6. Having perused the material on record, this Court is of the opinion that the contents of the impugned order dated 25-5-2016 and the material brought to the notice of this Court, nowhere indicates service of notice on the petitioner before the impugned order was passed. The direction given in the impugned order is clearly adverse to the interest of the petitioner and absence of notice to him completely vitiates the impugned order passed by the Naib Tahsildar. Apart from this, there is substance in the contention raised on behalf of the petitioner that even the report of the Circle Officer submitted before the Naib Tahsildar does not recommend grant of way to the applicant before the Naib Tahsildar from the agriculture field of the petitioner located in Survey No. 320/3. The Naib Tahsildar in the impugned order has simply recorded that the mother of the petitioner died on 5-11-2011 and that her legal representatives were expected to take steps for mutation in the revenue record. There is nothing to show that the petitioner and other legal representatives of the deceased Vachhalabai Parasramji Khonde were ever put to notice before the impugned order was passed.

7. Therefore, it is evident that the impugned order was passed by the Naib Tahsildar in violation of the principles of natural justice and, therefore, it deserves to be set aside.

8. Be that as it may, if the applicants before the Naib Tahsildar one of whom is respondent no. 1 before this Court, are entitled for grant of way under Section 143 of the aforesaid Code, their rights need to be decided in accordance with law.

9. In view of the above, the writ petition is allowed. The impugned order is quashed and set aside. Liberty is reserved for the respondent no. 1 and other similarly situated persons to move a properly framed application before the Tahsildar under Section 143 of the aforesaid Code for redressal of their grievance. The Tahsildar is directed that in the event such an application is filed, the same shall be decided by first putting all the parties likely to be affected by the proceedings, to notice and thereupon to decide the proceedings strictly in accordance with law.

10. Needless to say, if such an application is moved before the Tahsildar, the applicants would be expected to support the same with all relevant documents.

11. The writ petition is disposed of.

JUDGE