

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

30 WRIT PETITION NO.8163 OF 2022

1. Indubai Abhiman Patil,
Age: 80 yrs, Occ: Agriculture &
Household,
2. Arun Abhiman Patil,
Age; 62 years, Occ; Agriculture,
3. Kamlesh Arun Patil,
Age; 36 years, Occ: Agriculture,

Petitioner Nos. 1 to 3
R/o: Nashinde, Taluka &
District Nandurbar.

4. Punamchand Limba Patil,
Age: 55 yeas, Occ: Agriculture,
R/o: Borale, Tq. & Dist. Nandurbar
5. Sau. Vijaya Suresh Patil,
Age; 50 years, Occ; Agriculture,
R/o; Khondamali, Tq. &
District Nandurbar.
6. Sau. Latabai Ramchandra Patil
Age; 45 years, Occ; Agriculture,
R/o; Shindgavhan, Tq. &
District Nandurbar.
7. Sau. Sangita Raosaheb Patil,
Age; 42 yeas, Occ; Agriculture,
R/o; Khondamali, Tq. &
District Nandurbar.
8. Sau Vidhyabai Gokul Patil,
Age; 40 yeas, Occ; Agriculture,
R/o; Savkheda, Tq. Amalner,
District Jalgaon.

...Petitioners
(Original Respondents)

VERSUS

1. Rakesh Laxman Patil,
Age; 42 years, Occ; Agriculture,
2. Anil Laxman Patil,
Age; 45 years, Occ; Agriculture,
3. Prashant Laxman Patil,
Age; 40 years Occ; Agriculture,
4. Smt. Shobha Laxman Patil,
Age; 62 years, Occ; Agriculture,
5. Chabilal Shriram Patil,
Age; 62 years, Occ; Agriculture,
6. Sau. Madhavi Brijlal Patil,
Age; 48 years, Occ; Agriculture

All R/o; Nashinda,
Taluka & District Nandurbar.

..Respondents.
(Original Applicants)

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Advocate for Petitioners : Mr.Shah Subodh P.
Advocate for Respondent Nos. 1 to 6 : Mr.Mahajan Sudhir T. &
Mr.M.M. Jadhav

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CORAM : KISHORE C. SANT, J.

DATE : 27.07.2023.

PER COURT :

1. Heard the learned Advocate for the parties for some time.
2. The main grievance of the petitioners is that the petitioner Nos. 4 to 8 were not party before the Tahsildar in the

proceedings under Section 5 (2) of the Mamlatdar's Court Act and still the order is passed affecting their property. This position is admitted by the parties.

3. In short, the case of the petitioners is that petitioner No. 4 is the owner of land Gut No. 20, whereas, petitioner Nos. 5 to 8 are the owners of Gut No. 21/1. These petitioners were not party. Only owners of Gut No. 21/2 i.e. petitioner Nos. 1 to 3 were party to the proceedings. However, the learned Tahsildar by order dated 26.02.2018 directed to allow the road from the land Gut No. 20, Gut No. 21/1 and Gut No. 21/2 of village Nashinde, Tq. Nandurbar. The petitioners, therefore, filed a Revision Petition bearing No. RTS Application No. 40 of 2022 before the learned Deputy Collector, Nandurbar. The Deputy Collector, Nandurbar in Revision Petitioner directed the Tahsildar only to make spot inspection again and to hear the petitioners and submit report. This order was passed on 24.05.2022. Further a Stay was granted. The Tahsildar, thereafter, again conducted the spot panchanama as appears from the record. The learned Deputy Collector, thereafter, decided the Revision Petition and rejected the same by his order dated 01.07.2022.

4. The learned Advocate for the petitioners submits that it was necessary for the learned Deputy Collector to remand the matter, since the petitioner Nos. 4 to 8 were not party to the original proceedings. He submits that the learned Deputy Collector in fact observed and held that all these petitioners were necessary parties to the proceedings before the Tahsildar and still has rejected the Revision, though by calling fresh report. He submits that however, the petitioners could not get an opportunity to file their say on record and participate in the original proceedings. He, therefore, prayed for quashing and setting aside the impugned order.

5. The learned Advocate for the respondent Nos.1 to 6 submits that though all the petitioners were not party to the proceedings before the Tahsildar, however, the learned deputy Collector during pendency of the application has taken care of the interest of the petitioners by directing the Tahsildar to make fresh spot inspection and submit report by hearing all the concerned. He submits that, thus, no prejudice is caused to the petitioners and prays for rejection of the petition.

6. Considering the above submissions, this Court is

considering the petition only for limited purpose. That it was necessary for the respondents to make all the petitioners a party to the proceedings. It was also necessary for the Tahsildar to verify as to whether all the persons through whose land the road is directed are made as a party. Without verifying that, the learned Tahsildar has proceeded to decide the application. The learned Deputy Collector also is of the view that all the petitioners are necessary parties, still has not remanded the matter for fresh inquiry. It was necessary to remand the matter so as to afford an opportunity to the petitioners to participate in the proceedings.

7. Considering this aspect, this Court finds that it would be proper to quash and set aside the impugned orders and to remand the matter to the Tahsildar for fresh inquiry.

8. The respondents to add the present petitioners as party to the proceedings under Section 5 (2) of the Mamlatdar's Court Act.

9. Since all the parties are present before this Court, the parties are directed to appear before the Tahsildar on 07.08.2023.

10. The Tahsildar is requested to complete the proceedings and give decision within a period of three months from 07.08.2023.

11. Needless to say that while deciding the matter, the Tahsildar, shall observe the proper procedure given in the Mamlatdar's Court Act. With this, the Writ Petition stands disposed off. It is open for the parties to file fresh pleadings.

(KISHORE C. SANT)
JUDGE

mahajansb/