

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CIVIL APPELLATE JURISDICTION**  
**WRIT PETITION NO. 9143 OF 2022**

Gorakh Mohan Jadhav and Ors.

...Petitioners

V/s.

Sukhdeo Lahanu Ugale and Ors.

...Respondents

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**Mr. Rameshwar Gite**, for the Petitioners.

**Mr. Pratik Kalantri**, for Respondent Nos. 1 to 8, 10 and 11.

**CORAM : SANDEEP V. MARNE, J.**

**Dated : 11 October 2023.**

**P.C. :**

1. The challenge in the present petition is to the order dated 29 April 2022 passed by the Sub-Divisional Officer, Igatpuri rejecting Petitioner's Revision Application No.168 of 2021. The Revision Application was filed by the Petitioners under the provisions of Section 23(2) of the Mamlatdar Courts Act, 1906 challenging the order passed by the Tehsildar, Igatpuri on 13 September 2021.

2. I have heard Mr. Gite, the learned counsel appearing for the Petitioner and Mr. Kalantri the learned counsel appearing for Respondent Nos.1 to 8 and 10 and 11 and the learned AGP for Respondent Nos. 16 to 18. It appears that the original applicants had instituted a plaint before the Tehsildar under the provisions of Section 5 of the Mamlatdar Courts Act, 1906 only against Murlidhar Kisan Jadhav and Sudam Kisan Jadhav who are owners of land bearing Gat No.487. However, perusal of the plaint would show that obstruction was alleged to have been created in respect of land bearing Gat No.488 as well. Petitioners are the owners of land bearing Gat No.488. The Tehsildar directed spot panchanama to be conducted. In the spot panchanama, it was not specifically recorded that the obstruction was found in land bearing Gat No.488. However, the Tehsildar during the course of hearing of the case noticed that obstruction was allegedly created in both in lands bearing Gat Nos. 487 and 488. Since owners of land bearing Gat No.488 were not parties to the proceedings before the Tehsildar, he issued notices to the owners of land bearing Gat No.488. There is some degree of debate whether such notices were actually received by owners of land bearing Gat No.488 (Petitioners herein). In absence of owners of both Gat No.487 (original Respondents to case before the Tehsildar) as well as owners of land bearing Gat No.488 (Petitioners who allegedly did not receive notice), the Tehsildar proceeded to allow the application and directed removal

of obstruction to access road passing through Gat Nos. 487 and 488.

3. Petitioners filed revision under the provisions of Section 23(2) of the Mamlatdar Courts Act, 1906 raising a specific ground that they did not receive notice from Tehsildar before passing the order dated 13 September 2021. However perusal of the order passed by the Sub-Dvisional Officer would indicate that this particular aspect has not been considered or dealt with in the order dated 29 April 2022. Thus the main grievance of the Petitioners about non-impleadment and non-receipt of notices in respect of the proceedings conducted by the Tehsildar has not been decided by the Sub Divisional Officer. For this flaw, in ordinary course, the corrective action could be a remand before the Sub-Divisional Officer. But with a view to ensure that the Rasta Case is decided by grant of due opportunity to Petitioners to defend themselves and to lead evidence, remand to Tehsildar would be a proper course of action. In that view of the matter, the proceedings deserve to be remanded before the Tehsildar for being decided afresh by grant of opportunity of hearing as well as for the purpose of adducing evidence by both the sides.

4. The Writ Petition accordingly **succeeds**. The order dated 29 April 2022 passed by the Sub-Divisional Officer as well as order dated 13 September 2021 passed by the Tehsildar are set aside.

Rasta Case No.21 of 2020 stands restored before the Tehsildar, Igatpuri. Tehsildar shall provide opportunity of hearing as well as opportunity of adducing evidence to both the sides before taking a decision in the matter. Both the parties shall appear before the Tehsildar, Igatpuri on 30 October 2023. It shall not be necessary for the Tehsildar to issue separate notices to any of the parties. With the above directions, the Writ Petition is **disposed of**. The Tehsildar shall proceed to decide the proceedings in an expeditious manner.

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**SANDEEP V. MARNE, J.**