

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

Writ Petition No.5770 of 2022

SHARDA W/O GAJANANRAO DHORE
VS
THE SUB-DIVISIONAL OFFICER, CHANDUR RAILWAY, AMRAVATI AND OTHERS

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri Tejas Deshpande, Shri Alpesh Deshmukh, Advocates for the Petitioner
Ms H.N. Jaipurkar, AGP for the Respondent/State
Shri N.A. Gawande, Advocate for the respondent Nos.3 to 5 and 7

CORAM : ANIL S. KILOR, J.
DATED : 27.02.2023

1. Heard.
2. The petitioner has approached to this Court by way of the present writ petition, challenging the order dated 23.05.2018 passed by the respondent No.2-Naib Tahsildar (Revenue), Nandgaon Khandeshwar and order dated 13.06.2022 passed by the respondent No.1-Sub Divisional Officer (SDO) Chandur Railway, upholding the order of the Naib Tahsildar, directing the petitioner to remove obstruction created in the approach way of the respondents, by the petitioner.
3. The only submission made by the learned counsel for the petitioner is that, as no notice was served upon the petitioner, she had no knowledge about the proceedings before the Mamlatdar under Section 5 of the Mamlatdars' Courts Act, 1906 and

therefore, the petitioner could not remain present and place her defence on record.

4. The order-sheet of the respondent No.2-Naib Tahsildar (Revenue), Nandgaon Khandeshwar does not show the service of notice was made upon the petitioner. Even the learned AGP or the learned counsel for the respondents are not in a position to point out that the notice was served upon the petitioner.

5. In the circumstances, as there is a violation of principles of natural justice, without going into the merit of the matter I am of the opinion that this writ petition should be disposed of by remanding the same to the respondent No.2-Naib Tahsildar (Revenue), Nandgaon Khandeshwar (Mamlatdar). Accordingly, I pass the following order:

(i) The writ petition is partly **allowed**.

(ii) The order dated 23.05.2018 passed by the respondent No.2-Naib Tahsildar (Revenue), Nandgaon Khandeshwar and order dated 13.06.2022 passed by the respondent No.1-Sub Divisional Officer (SDO) Chandur Railway, are hereby quashed and set aside.

(iii) The matter is remanded back to the Mamlatdar/Naib Tahsildar for fresh decision, after hearing both the parties.

(iii) Both the parties shall appear before the respondent No.2-Naib Tahsildar (Revenue)/Mamlatdar, Nandgaon Khandeshwar on 10.03.2023 at 12.00 noon. The

Mamlatdar shall decide the application under Section 5 of the Mamlatdars' Courts Act within six weeks, thereafter.

The writ petition is **disposed** of accordingly.

[ANIL S. KILOR, J.]