



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

Writ Petition No.3602 of 2021

**Gopal S/O Gulabrao Salunke (Dead) Thr. His P.O.A.- Wife And others Vs Collector,
Collectorate, Nagpur 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 G.N. Khanzode, Advocate for the Petitioner/s
Ms H.N. Jaipurkar, AGP for the Respondent Nos.1 and 2/State
Ms Arushi Dangre, Advocate for the respondent Nos. 3 to 5

CORAM : ANIL S. KILOR, J.
DATED : 14.09.2023

1. Heard.
2. In this petition, the order dated 18.03.2020 passed by Naib Tahsildar, Katol under the Mamlatdar's Courts Act, 1906 (for short "the Act of 1906"), directing the petitioners to remove the obstruction, was maintained by the Deputy Collector (Revenue), Nagpur, vide impugned order dated 15.06.2021, is the subject matter of challenge in this writ petition.
3. After going through the application filed by the respondent Nos.3 to 5 under section 5 of the Act of 1906 before the Tahsildar, it is evident that it was not filed in a proper format or with the necessary compliance of Section 7 of the Act of 1906.
4. The respondent Nos.3 to 5 have not mentioned the date of cause of action as required under section 5(4) of the Act of 1906, to determine the point of limitation as prescribed under sub-section (3) of section 5 of the Act of 1906.

5. The Co-ordinate Bench of this Court in the case of *Gaurakshan Sansthan vs. State of Maharashtra*¹ has held that, the provision of section 7 of the Act of 1906 is mandatory.

6. In the circumstances, as there is no compliance of section 7 of the Act of 1906, the only option left with this Court is to remand the present matter back to the Tahsildar, Katol to decide the same afresh, after seeking compliance of section 7 of the Act of 1906 from the respondent Nos.3 to 5. Accordingly, I pass the following order:

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

(ii) The order dated 18.03.2020 passed by Naib Tahsildar, Katol and the order dated 15.06.2021 passed by Deputy Collector (Revenue), Nagpur, are hereby quashed and set aside.

(iii) The respondent Nos. 3 to 5 are at liberty to make the subsequent purchasers of survey No.54 as party to the application under section 5 of the Act of 1906, if they so desire.

(iv) **Parties shall appear before the Tahsildar, Katol on 04.10.2023 at 11.00 a.m.**, thereupon, the Tahsildar shall decide the application after seeking compliance of section 7 of the Act of 1906 and on following the procedure as prescribed under section 8 to 12 of the Act

1 2019(6) Mh.L.J. 473

of 1906, within three months from the date of appearance of the parties.

7. Accordingly, the writ petition is disposed of in the above terms. No order as to costs.

[ANIL S. KILOR, J.]