

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

Writ Petition No.8221 of 2022

GAJANAN PUNJABRAO DEULKAR

VS

THE DEPUTY COMMISSIONER, AMRAVATI DIVISION, 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

Ms Shaad Mirza, Advocate for the Petitioner
Shri Dharmadhikari, Advocate for the respondent Nos.1 to 4
None for the respondent Nos.5 and 6

**CORAM : ANIL S. KILOR, J.
DATED : 24.01.2023.**

1. Heard.
2. In this petition, the order of the Additional Commissioner, Amravati dated 31.05.2022, maintaining the orders of the Tahsildar, Darwha dated 21.12.2011, the Sub-Divisional Officer, Darwha (SDO) dated 24.12.2012 and the Additional Collector, Yavatmal dated 28.02.2014, directing the petitioner to remove obstruction and clear the way of the respondent Nos.5 and 6 approaches to their respective fields, is under challenge.
3. The learned counsel for the petitioner submits that the Tahsildar without considering the fact that the application was not filed in a proper format and further no cause of action was mentioned in the application, entertained the application of the respondent Nos.5 and 6 and passed the order.
4. It is submitted that even the reply filed by the petitioner was not considered by the Tahsildar and therefore, the order of the Tahsildar is erroneous and as the SDO upheld the order passed

by the Tahsildar so also the Additional Collector upheld the order of the SDO and the same was maintained by the impugned order dated 31.05.2022 by the Additional Commissioner, all the above referred orders need to be quashed and set aside.

5. On the other hand, the learned APP supports the order passed by the Additional Commissioner and submits that he is right in upholding the orders passed by the Tahsildar, the SDO and the Additional Collector.

6. I have perused the documents filed along with the petition and the impugned order.

7. From the application filed by the respondent Nos.5 and 6, it is evident that it is not in a format and nothing has been brought on record to show that the procedure contemplated under Sections 9 to 12 of the Mamlatdar's Courts Act, 1906 (in short "the Act of 1906") was followed by the Mamlatdar. However, on merit, all the four authorities below have considered the spot inspection report and after getting satisfied that the petitioner obstructed the approach way of the respondent Nos.5 and 6, the impugned orders were passed in favour of the respondent Nos.5 and 6.

8. Thus, on merit, I do not find any error committed by the authorities below. However, the Tahsildar ought to have followed the procedure as contemplated under Sections 9 to 12 of the Act of 1906.

9. In the circumstances, without disturbing the present status of the disputed approach way of the respondent Nos.5 and 6 and without disturbing findings recorded by the authorities below, I

am of the opinion that the matter needs to be remanded back for a limited purpose to follow the procedure, under Sections 9 to 12 of the Act of 1906, regarding filing of application in a proper format as envisaged under Section 7 of the Act of 1906. Accordingly, I pass the following order:

- (i) The writ petition is **partly allowed**.
- (ii) The matter is remanded back to the Tahsildar, Darwha, Dist. Yavatmal for a limited purpose to comply with the procedure as envisaged under Sections 9 to 12 of the Mamlatdar's Courts Act, 1906 in the light of the Section 7 of the Mamlatdar's Courts Act.
- (iii) It is made clear that this Court has not disturbed the findings of fact recorded by the authorities below and the matter is remanded back to the extent of above referred purpose only.

The writ petition is **disposed of** in the above terms.

[ANIL S. KILOR, J.]