



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

Writ Petition No. 2781 of 2023

- (1) Shri Dinanath s/o Gulabrao Kakade,
Aged about 69 years,
Occupation : Agriculturist,
- (2) Shri Dnyaneshwar s/o Gulabrao Kakade,
Aged about 55 years,
Occupation : Agriculturist,
Both R/o Narsingi, Tahsil Narkhed
District Nagpur.

.... Petitioners

VERSUS

- (1) The Sub-Divisional Officer
Katol, Tahsil Katol, District Nagpur.
- (2) Naib Tahsildar Jalalkheda,
Tahsil Narkhed, District Nagpur.
- (3) Haribhau s/o Keshavrao Pachpohar
Aged about : Major,
occupation : Agriculturist,
R/o Narsingi, Tahsil Narkhed
District Nagpur.
- (4) Raju s/o Gangaram Raut,
Aged about : Major,
occupation : Agriculturist,
R/o Narsingi, Tahsil Narkhed
District Nagpur.

.... Respondents

Mr. Rahul Tajne, Advocate for the petitioners
Mr. H. D. Dube, A.G.P. for the respondent nos. 1 and 2
Mr. M. R. Patil, Advocate for respondent no. 3

CORAM : ANIL L. PANSARE J.

DATED : 24-07-2024

ORAL JUDGMENT

Rule. Rule made returnable forthwith. Heard finally with consent of learned counsel appearing for the parties.

2. The challenge is to order dated 11-11-2022 passed by the revisional authority under Section 23 of the Mamlatdar's Courts Act, 1906 (hereinafter referred to as 'the Act of 1906') upholding the finding rendered by the Mamlatdar vide order dated 24-11-2020.

3. Having heard both sides and having gone through the material placed before me, it appears that respondent no. 3 has filed before Mamlatdar an application/complaint stating therein that right of way to his field has been obstructed by Raju Gangaram Raut (Respondent no. 4 herein). The Mamlatdar, however, has issued direction to the present petitioners and others to remove impediment from the way that runs through various agricultural fields.

4. It appears that a simple application was made, that too, against respondent no. 4. The Mamlatdar has ignored the provisions under Sections 7, 8 and 9 of the Act of 1906 and proceeded to record findings without following the procedure prescribed under the aforesaid provisions.

5. That apart, learned counsel for the petitioners submits that the spot inspection was carried out without knowledge to the petitioners and the petitioners were called by the Tahsildar and were made to believe that their statement is to be recorded in some proceedings and accordingly their participation has been shown in the proceedings.

6. Learned counsel appearing for respondent no. 3 and learned Assistant Government Pleader made an attempt to counter the submissions, however, they failed to show that Mamlatdar has carried out the inspection in the presence of the petitioners and secondly, the procedure as laid down under Sections 8 and 9 of the Act of 1906 has been duly followed.

7. In any case, when the complaint was filed against respondent no. 4, the Mamlatdar ought to have justified his finding against third party i.e. petitioners and others, who were not party to the proceedings. The revisional authority also failed to take into account the aforesaid vital fact. Both the proceedings are, therefore, vitiated for not adhering to the principles of natural justice and for non-compliance of the provisions of the Act of 1906. The orders passed by the authorities below are, therefore, unsustainable.

8. Writ petition is accordingly allowed.

9. Revenue Case No. 4/BND-54/2019-20 is remanded back and restored on the file of Naib Tahsildar's Court at Jalalkheda for deciding it afresh in accordance with the provisions of the Mamlatdar's Courts Act, 1906.

10. Rule is made absolute in above terms.

(Anil L. Pansare, J.)

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