



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

Writ Petition No. 8332 of 2019

Shewantabai Ganpat Samarth,
aged about 70, occ – cultivation,

Through her Power of Attorney Holder
Pramod Ganpat Samarth
aged about-54, occu-service

r/o Sai Mandir, besides Vidyanagar,
Brahmapuri, Tahsil-Brahmapuri,
District-Chandrapur.

.... Petitioner

VERSUS

(1) Sub Divisional Officer,
Brahmapuri

(2) Additional Commissioner,
Nagpur

(3) Rushi Yashwant Kawale (Since Deceased)
Through his legal heirs

(3a) [Manohar Rushi Kawale] Dead
aged -major, occu- Nil
Through Legal Representatives

Legal heirs
of deceased
respondent
no. 3(a)
brought on
record as per
Court's order
dtd. 2/7/2024

[3a-(i)] Digambar Manohar Kawale,
Aged about 41 years,
Occupation : Service,
R/o Forest Range Officer
(Wildlife), Kolara, Tah. Chimur,
District – Chandrapur

[3a-(ii)] Bhupesh Manohar Kawale,
Aged about 38 years,
Occupation : Auto Driver,
R/o Bhawani Ward,
Bramhapuri, Tah. Bramhapuri,
District – Chandrapur.

[3a-(iii)] Shubhangi Ravindra Yerne,
Aged about 35 years,
Occupation : Household,
R/o Warathi, Tahsil &
District – Bhandara.

(3b) [Somawar Rushi Kawale] Dead
aged -major, occu- Nil

Through Legal Representatives

Legal heirs
of deceased
respondent
no. 3(b)
brought on
record as per
Court's order
dtd. 2/7/2024

[3b-(i)] Smt. Usha Someshwar Kawale,
Aged about 60 years,
Occupation : Household,
R/o Bhawani Ward,
Bramhapuri, Tah. Bramhapuri,
District – Chandrapur.

[3b-(ii)] Sou. Pornima Praful Mogare,
Aged about 38 years,
Occupation : Household,
R/o, Gol Bazar Grocery Shop,
Chandrapur, Tahsil and
District – Chandrapur.

[3b-(iii)] Shrikant Someshwar Kawale,
Aged about 35 years,
Occupation : Business,
R/o Bhawani Ward,
Bramhapuri, Tah. Bramhapuri,
District – Chandrapur.

[3b-(iv)] Sou. Sarika Deepak Khanke,
Aged about 33 years,
Occupation : Household,
R/o Bhawani Ward,
Bramhapuri, Tah. Bramhapuri,
District – Chandrapur.

(3c) Bhaurao Rushi Kawale,
aged – major, Occu – Nil.

(3d) Namdeo Rushi Kawale,
aged – major, Occu – Nil.

Respondent No. 3a to 3d
r/o Bhawani, Ward Brahmapuri,
Tahsil-Brahmapuri,
District-Chandrapur.

.... Respondents

Mr. Madhur Deo, Advocate for the petitioner
Ms. S. S. Dhote, A.G.P for respondent nos. 1 and 2
Mr. S. M. Nafde, Advocate for respondent no. 3a(i) to 3a(iii) and 3b(i) to
3(b)(iv), (3c) and (3d)

CORAM : ANIL L. PANSARE J.

DATED : 16-07-2024

ORAL JUDGMENT

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

2. The proceedings under question relate to the mutation entries in the revenue record. I am informed that the matter was heard on 18-3-2019 by Dr. Sanjeev Kumar, the then Additional Commissioner, Nagpur Division, Nagpur and was closed for order. He was, thereafter, transferred. Mr. A.S.R. Nayak was then posted as Additional Commissioner, Nagpur Division, Nagpur. He has then delivered the judgment on 25-10-2019. The parties are *ad-idem* that written notes of argument were filed before Dr. Sanjeev Kumar, the then Additional Commissioner. It is also an admitted position that before passing order,

Mr. A.S.R. Nayak, Additional Commissioner has not given an opportunity of oral argument to the parties.

3. The contention is that without giving opportunity of oral hearing, the subsequent officer could not have decided the matter only on the basis of written notes of argument.

4. The controversy is covered by the judgment passed by the Division Bench of this Court in ***Rukhana Associates, Mumbai Vs. E-Square Leisure Pvt. Ltd., Mumbai [2010(5) Mh.L.J. 202]***. The Division Bench has held that the requirement of hearing oral arguments by the Judge, who finally pronounces or writes the Judgment, is not only intrinsic in the scheme of principles of natural justice but is mandatory. The Court further held that the judgment can be pronounced only after the case has been heard with a further clarification that the judgment can be pronounced only by the Judge, who has heard the oral arguments. The Court then held that merely because parties have already filed written submissions or gist of oral arguments advanced before the predecessor Judge, is not sufficient to proceed to pass the judgment.

5. The importance of personal hearing has been explained by the Constitution Bench of the Hon'ble Supreme Court in the case of ***Gullapalli Nageswara Rao and others Vs. A. P. State Road Transport***

Corporation and another [AIR 1959 SC 308] wherein the Hon'ble Supreme Court held as under.

“31. The second objection is that while the Act and the Rules framed thereunder impose a duty on the State Government to give a personal hearing, the procedure prescribed by the Rules impose a duty on the Secretary to hear and the Chief Minister to decide. This divided responsibility is destructive of the concept of judicial hearing. Such a procedure defeats the object of personal hearing. Personal hearing enables the authority concerned to watch the demeanour of the witnesses and clear-up his doubts during the course of the arguments, and the party appearing to persuade the authority by reasoned argument to accept his point of view. If one person hears and another decides, then personal hearing becomes an empty formality. We therefore hold that the said procedure followed in this case also offends another basic principle of judicial procedure.”

6. As could be seen, the Supreme Court held that personal hearing enables the authority to clear-up his doubts during the course of arguments and assigned additional reason to highlight importance of personal hearing. In view thereof, the impugned order dated 25-10-2019 passed by learned Additional Commissioner, Nagpur Division, Nagpur is quashed and set aside.

7. The appeal is remanded back to the Additional Commissioner, Nagpur Division, Nagpur for decision afresh in the light of what has been said in the body of the order.

8. Rule is made absolute in above terms.

(Anil L. Pansare, J.)

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