



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

915 WRIT PETITION NO. 6545 OF 2022

NAMDEO GOPINATH LAVANDE AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

Ms. S. M. Zaware, Advocate for the petitioners
Mrs. M. N. Ghanekar, AGP for the respondent/State
Mr. N. K. Chaudhari, Advocate for respondent Nos. 13 and 14
Mr. R. R. Karpe, Advocate for respondent Nos. 4 to 8, 11 and 12.

CORAM : R. M. JOSHI, J.
DATE : 11th MARCH, 2025

PER COURT :-

1. This petition takes exception to the order dated 3rd May, 2021 passed by Tahasildar under Section 5(2) of the Mamlatdar's Courts Act (fort short 'the Act') and confirmation thereof in R.T.S. Revision No. 150 of 2021 by order dated 21st March, 2022.

2. Learned counsel for the petitioners has drawn attention of the Court to the order passed by the Tahasildar and more particularly the operative part which indicates that way has been provided from the bandh of Gut No. 289. There is a direction that there should not be any obstruction for the way from the bandh of Gut Nos. 365 and 289. It is her contention that this order has been passed without petitioner who is the owner of Gut No. 289 being joined as a party to the said proceeding.

Thus, for want of opportunity of hearing, order cannot sustain.

3. Learned counsel for the contesting respondent sought to support the impugned order by referring to the panchnama carried out by Tahasildar. It is his contention that the petitioner was fully aware of the said panchnama and the proceeding and therefore there is no substance in the opposition of the impugned order on the ground that the petitioner was not heard.

4. In the application filed before Tahasildar, no specific averment is made with regard to the obstruction being caused by the petitioner herein. Moreover there is also no reference in the application about Gut No. 289. Thus, it cannot be said that the petitioner could be said to be aware of the dispute in question only for the reason that there is a reference of his name in the panchnama. This Court finds substance in the contention of the learned counsel for the petitioner that for the first time while passing the impugned order impugned a reference is made to the Gut No. 289 belonging to the petitioner. Once observation is made that there should not be any obstruction from the way which exists on the bandh of Gut No. 365 and 289, practically there is an order passed against the petitioner without hearing him. Such order cannot sustain as if this contrary to the principles of natural justice and the principles of audi alteram partem. Consequently such order passed without giving

opportunity of hearing to the petitioner cannot sustain. Hence, petition stands allowed. Impugned orders are set aside.

5. The proceeding being Rasta Case No. 145/2019 is relegated back to the Tahasildar, Shrirampur for decision afresh. The contesting respondent to add the petitioner as a party respondent to the said proceeding. The amendment be carried out before the Tahasildar. Learned counsel for the petitioner, on instructions, waives service of notice of the proceeding before the Tahasildar.

6. Parties are directed to appear before the Tahasildar on 18th March, 2025. Tahasildar is not required to issue fresh notice to the parties. Needless to say that all the issues are kept open before the Tahasildar. Tahasildar to decide the application expeditiously and in any case within a period of three months from today.

(R. M. JOSHI, J.)

ssp