



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

WRIT PETITION NO.6077/2024

Shri Sunil S/o Prabhakar Alshi and others

...Versus...

The Tahsildar/Mamlatdar and Taluka Magistrate, Mehkar, Tah. Mehkar Dist.
Buldhana and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders

Mr. Omkar Deshpande, Advocate for petitioners
Mr. H.D. Futane, AGP for respondent Nos.1 and 11
Mr. R.B. Dhore, Advocate for respondent Nos.2 to 10

CORAM : SACHIN S. DESHMUKH, J.

DATE : 20/08/2025

1. The petitioners who are the owners of Gat Nos.60 and 62 are facing proceedings under Section 5 of the Mamlatdar's Courts Act, 1906 (for short hereinafter "Act of 1906") presented at the instance of respondent Nos.2 to 10, who are owners of Gat Nos.267, 268, 269, 270, 271 and 272 with an assertion that the customary cart way which was used by the applicants has been obstructed by the present petitioner.

2. The Mamlatdar while considering the proceedings under Section 5 of the Act of 1906 it was obligatory to adhere the principles of natural justice by extending necessary opportunity to the litigating sides to put forth their say. However, making departure from the same, the order is rendered by the Mamlatdar unilaterally by allowing the application has directed the removal of obstruction and

restored the said cart road in existence. Raising challenge to the same, the petitioners have approached this Court on the solitary ground that no notice was ever served upon the petitioners.

3. This Court while issuing notice on 15/10/2024 has recorded the statement of Assistant Government Pleader on instructions of concerned officer that no notice to the petitioners was served and the same has been confirmed by the concerned authority. Resultantly, *ad interim* relief was granted by this Court.

4. Having heard the learned Counsel for the litigating sides, when this Court has confronted the learned Counsel representing the contesting respondent Nos.2 to 10 has fairly conceded that necessary opportunity ought to be extended to the petitioners. Thus, the order is contrary the principles of natural justice as no notice was served upon the petitioners before passing the impugned order. The unsustainability of the same is rather apparent therefore, deserves to be quashed and set-aside.

5. Thus, the order rendered by the Tahsildar is contrary to the settled principle to the right of natural justice. If the opportunity of hearing is not provided, the principle of natural justice shall so demand that the same be granted, unless excluded by any specific law. However, the scheme under Mamlatdar's Courts Act unequivocally entails the present petitioners to put forth their say. Thus, the impugned order is not in coherence with the statutory mandate vis-a-vis principle of natural justice. Resultantly, the impugned order rendered by the Mamlatdar is hereby quashed and set aside.

The matter is relegated to Mamlatdar who shall extend an opportunity to the petitioners to put forth their say. Thus, the contesting litigants are directed to appear before the Mamlatdar on 12/09/2025 to put forth the same.

6. Needless to state that the Mamlatdar shall hear the rival submissions and conclude the proceedings strictly in accordance with the law.

7. With the aforesaid observations the writ petition is allowed. No order as to costs.

(SACHIN S. DESHMUKH, J.)