



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 3032 OF 2024

1. Shivaji s/o Rangnath Shinde,
Age: 69 years, Occu. Agril.
R/o Bel Pimpalgaon, Tq. Newasa,
District Ahmednagar.
2. Rahul s/o Shivaji Shinde,
Age: 43 years, Occu. Business,
R/o Sy. No.71, Flat No.A-1/4,
Balaji Residency Society,
Pimpale Gurav, Pune,
Taluka and Dist. Pune.
3. Sakharabai Rangnath Shinde,
Age: 71 years, Occu. Agril. &
Pensioner, R/o Sy. No.71,
Flat No.A-1/4, Balaji Residency
Society, Pimpale Gurav, Pune,
Taluka and Dist. Pune.

.....PETITIONERS
(Ori. Applicants)

VERSUS

1. The State of Maharashtra,
Through its Secretary,
Revenue and Forest Department,
Maharashtra State, Mumbai.
2. The Sub Divisional Officer,
Nagar Division, Ahmednagar,
District Ahmednagar.
3. The Tahsildar, Nawasa,
District Ahmednagar

4. Haridas s/o Dagadu Gatkhal,
Age 57 years, Occu. Agril,
5. Digambar s/o Ramkisan Gatkhal,
Age 50 years, Occu. Agril.,
6. Dattatraya s/o Ramkisan Gatkhal,
Age 34 years, Occu. Agril.,
7. Bhanudas s/o Dagadu Gatkhal,
Age 58 years, Occu. Agril.,
8. Ashabai Bhanudas Gatkhal,
Age 52 years, Occu. Agril.,
9. Raosaheb s/o Madhav Gatkhal,
Age Major, Occu. Agril,
10. Babasaheb s/o Madhav Gatkhal,
Age Major, Occu. Agril.,
11. Sachin s/o Raosaheb Gatkhal,
Age Major, Occu. Agril.,

All R/o Bel Pimpalgaon, Tq. Newasa,
District Ahmednagar.

.....RESPONDENTS
(Orig. defendants)

Mr. B. G. Sagade, Advocate for the Petitioners
Mrs. M. L. Sangit, AGP for Respondent-State
Ms. P. C. Kale, Advocate for Respondent nos.4 to 9

WITH
CIVIL APPLICATION NO. 7710 OF 2024 IN WP/3032/2024

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CORAM : AJIT B. KADETHANKAR, J.

DATED : 05TH MARCH, 2026

ORAL JUDGMENT :-**SUBJECT MATTER**

1. Failure to give an opportunity of hearing to stakeholders in a proceeding under Section 5 of the Mamlatdar's Courts Act, 1906 is the subject matter of present Writ Petition.

2. Rule. Rule made returnable forthwith.

3. By consent of the parties, the matter is heard for final disposal.

4. Mr. B. G. Sagade, learned Counsel for the petitioners would submit that the respondent nos.4 to 9/original applicants did not array the petitioners as party respondents in the proceedings under Section 5 of the Mamlatdar's Courts Act, 1906. However, the Mamlatdar/ Authority under the Act, suo-moto arrayed the name of the petitioner no.1 as party respondent no.4 in the proceeding and passed the impugned order dated 13.09.2022.

5. The contention of the petitioners is that although the petitioners were stakeholders of the said litigation/proceeding under the Act, 1906, they were not made party to Section 5 proceeding nor had an opportunity of hearing in the said

proceeding. Learned Counsel for the petitioners would submit that the Appellate/Revisional Authority has also not considered this aspect of the matter and has concurred the findings rendered by the Mamlatdar.

6. Ms. P. C. Kale, learned Counsel for the respondent nos.4 to 9 would vehemently rely on the panchnama at page nos.32 and 33 and submit that the panchnama bears the signature of the present petitioner no.1 which cause to show that he had ample knowledge of the present proceedings. She also placed reliance on some private photographs contending that the petitioner no.1 was present at the time of panchnama.

7. Mr. B. G. Sagade, learned Counsel for the petitioners would however strongly oppose such submission. He deny the signature of the petitioner no.1 on the panchnama and would submit that the panchnama is conducted behind the back of the petitioners and that petitioner no.1 has not signed the said panchnama. He would also oppose for reliance placed by the respondent nos.4 to 9 on the private photographs. He would then invite my attention to page no.25, Exhibit-B of the Writ Petition compilation. The title clause of the application filed

by the respondent nos.4 to 8 does not show the names of any petitioner in the array of party respondents.

8. Ms. P. C. Kale, learned Counsel for the respondent nos.4 to 9 in all fairness agree that the petitioners were not arrayed as party respondents/opponents in the original application. She would however submit that after preparation of panchnama the petitioners have created obstruction to the respondent nos.4 to 9.

9. May it be, it is evident that the petitioners were not made party to the original proceedings under Section 5 of the Act of 1906. Why the Tahsildar/Mamlatdar recorded the name of petitioner no.1 as party respondent no.4 in the proceeding and passed the impugned order against him is best known to the Tahsildar only.

10. The facts and record placed before me indicate that the petitioners were not afforded any opportunity of hearing by the respondent nos.2 and 3 in the proceedings under the Act of 1906. It appears that Respondent Nos. 4 to 9 may have led Respondent Nos. 2 and 3 to believe that the purported signature of Petitioner No. 1 on the panchnama establishes

that the petitioners had knowledge of the entire proceedings, and therefore there was no need to afford them any hearing in the proceedings under the Act of 1906.

11. At this juncture, in the peculiar facts of the case, I refrain from making any observations on the merits of the respective contentions of the parties. The office of Mamlatdar is defined as Court under the Mamlatdar's Courts Act, 1906. It is the bounden duty of the authorities under the Act to afford a full opportunity of hearing to all stakeholders in the subject matter.

12. In my view, respondent nos.2 and 3 utterly failed to apply judicious mind to the case in hand by holding that the petitioners did not require a hearing in the proceedings as there was signature of petitioner no.1 on the panchnama. In fact it was mandatory on the part of respondent no.3 and thereafter of respondent no.2 to call upon the petitioners to put forth their respective side.

13. I agree with the contention advanced before me by Mr. Sagde, learned Counsel that why the petitioner no.1 would sign such panchnama which is against the petitioners. I have

no doubt in my mind in observing that the respondent nos.2 and 3 have dealt with the matter in a very mechanical manner. None of those two authorities even looked to the title clause of the original complaint, where none of the petitioners was made party.

14. Respondent no.2 and 3 have not even given any reason as to why the impugned order is passed against the petitioner no.1 by recording his name as respondent in the proceeding.

15. In my view, if the panchnama is purported to have been signed by a stakeholder in the controversy before the Mamlatdar, the authority should have secured a separate statement of such stakeholder, to avoid any controversy and to maintain transparency. It is expected that these authorities shall meaningfully learn and observe the spirit of Section 5 of the Mamlatdar's Courts Act, 1906. Principles of natural justice has great significance in such proceeding.

16. Mrs. M. L. Sangit, learned AGP is unable to justify the action on the part of the Tahsildar/Mamlatdar. In the light of peculiar facts and above observations, I deem it appropriate to relegate the parties back to the concerned Mamlatdar under

Section 5 of the Act of 1906 in order to give the real stakeholders a full opportunity of hearing.

17. For the reasons recorded above, I pass following Order:

ORDER

- a. Writ Petition stands allowed.
- b. Order dated 29.12.2023, passed by the respondent no.2 in RTS No.473 of 2022 and the order dated 13.09.2022 passed by the respondent no.3/Tahsildar, Newasa, Dist. Ahmednagar in Road Case No.30/2022 stand quashed and set aside.
- c. The respondent nos.4 to 9 to add the petitioners as party respondents in the proceeding under Section 5 of the Act of 1906.
- d. The respondent no.3 shall issue notices to the petitioners and render full opportunity of hearing them and then shall pass appropriate order on its own merits without influenced by the panchnama, the earlier findings recorded by the respondent no.3, and confirmed by respondent no.2.
- e. All contentions of the parties are kept open.

f. In the peculiar facts, the interim relief granted by this Court on 23.04.2024 at paragraph no.6 shall continue to operate till the disposal of the application under Section 5 of the Act of 1906.

g. Writ Petition stands allowed in above terms.

h. Rule made absolute in above terms.

i. Pending Civil Applications, if any, stand disposed of.

(AJIT B. KADETHANKAR, J.)