



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

WRIT PETITION NO. 1486 OF 2024

SMT. PREMILA @ NIRMALA RAMESH RAUT AND ANOTHER

VERSUS

SUB DIVISIONAL OFFICER, SAONER, DIST. NAGPUR AND OTHERS

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

Court's or Judge's Order

Mr. Pushkar V. Ghare, Advocate for the petitioners
Mr. S. B. Bissa, A.G.P. for respondent nos. 1 and 2
Mr. M. R. Joharapurkar, Advocate for respondent nos. 3 and 4.

CORAM : M. W. CHANDWANI, J.

DATE : FEBRUARY 18, 2026.

1. Heard Mr. Pushkar Ghare, learned counsel appearing for the petitioners, Mr. S. B. Bissa, learned A.G.P. appearing for respondent nos.1 and 2 and Mr. M. R. Joharapukar, learned counsel appearing for respondent nos.3 and 4.

2. The challenge in this petition is to the order dated 12.01.2024 passed by respondent no.1 – Sub Divisional Officer, Saoner, Dist. Nagpur thereby dismissing the revision filed by the petitioners and confirming the order dated 26.05.2023 passed by respondent no.2 – Naib Tahsildar cum Joint Mamlatdar, Kalmeshwar allowing the proceedings filed by the respondents under Section 5 of the Mamlatdar's Courts Act, 1906, directing the petitioners to remove obstruction and make pathway accessible.

3. The petitioners are the original non-applicants and respondents are the original applicants.

4. The main contention of the petitioners is that before the Mamlatdar's Court, no opportunity was granted to the petitioners to cross-examine the witnesses of the respondents and to lead their evidence. Moreover, no opportunity of oral hearing was granted to the petitioners before closing the matter for final order. The statements of respondent nos.3 and 4 were recorded. On 23.05.2023, when the petitioners filed an application for adjournment, respondent no.2 did not entertain the same and closed the matter for final order without deciding the adjournment application. Accordingly, the impugned order came to be passed by respondent no.2.

5. In revision application filed by the petitioners, though a specific ground of not giving fair opportunity to them was raised, respondent no.1 did not consider the same and rejected the revision thereby confirming the order passed by respondent no.2.

6. In order to buttress his submission, learned counsel for the petitioners seek to rely on the decision in the case of ***Sudhir Yashwant Dhangade .vs. Ankush Kashiram Bole and others***, reported at ***2019 SCC Online Bom 18***, wherein at paragraphs 11 and 12, this Court has held as under :

"11. In the instant case, the records reveal that

the Mamlatdar has recorded statements of the respondent no. 1 and his witnesses. In view of applicability of the provisions of Section 135, 136, 137 and 138 of the Indian Evidence Act to the proceedings under Section 5 of the Mamlatdars Court Act, the petitioner had right to cross examine the respondent no. 1 and his witnesses. The records reveal that the learned Mamlatdar had not given an opportunity to the petitioner to cross examine the respondent no. 1 and his witnesses. Suffice it to say, right of cross examination being legal right, the petitioner was not required to file any application but it was the obligation of the statutory authority recording the evidence to afford such opportunity. In the instant case, no such opportunity was given.

12. It is well settled that no evidence affecting a party is admissible against that party unless the latter has had an opportunity of testing its truthfulness by cross examination. Under the circumstances, the learned Mamlatdar was not justified in placing reliance on the evidence of the respondent no. 1 and his witnesses without giving any opportunity of cross examination. The order passed by the learned Mamlatdar is in breach of principles of natural justice.

7. Perusal of the impugned orders reveal that apart from spot inspection, the authority had relied on the statements of the respondents and their witnesses. However, the record reveals that respondent no.2 had not given any opportunity to the petitioners to cross-examine the witnesses of the respondents and to lead their evidence. The record further shows that an application

for adjournment was filed, but it was not considered and the matter was closed for orders.

8. As held in *Sudhir Yashwant Dhangade's* case (*supra*), it was obligatory on the part of the statutory authority to record the evidence by giving opportunity of cross-examination to the other side.

9. Since, the petitioners were not allowed to cross-examine the witnesses of the respondents and to lead their evidence, it can be said that a fair opportunity was not granted to them. Therefore, it will be appropriate to remand the matter back to respondent no.2 for giving an opportunity to both the sides to cross-examine the witnesses and pass appropriate orders afresh in accordance with the law.

10. Accordingly, the writ petition is partly allowed.

11. The order dated 12.01.2024 passed by respondent no.1 – Sub Divisional Officer, Saoner, Dist. Nagpur in Revision No. 17/M.C.A.-5/2022-23 as well as the order dated 26.05.2023 passed by respondent no.2 – Naib Tahsildar cum Joint Mamlatdar, Kalmeshwar in Ra.Ma.Kra.02/M.C.A.5/Prastu.3/2022-23, are quashed and set aside.

12. The matter is remanded back to respondent no.2 -

Naib Tahsildar cum Joint Mamlatdar, Kalmeshwar for giving an opportunity to both the parties to cross-examine the witnesses and pass appropriate orders afresh in accordance with law.

13. The parties are directed to appear before respondent no.2 on **9th March, 2026**.

14. Till the orders are passed by respondent no.2, respondent no.3 and 4 be allowed to use the pathway in question.

15. The petition stands disposed of in the aforesaid terms.

(M.W.Chandwani, J.)

Diwale