



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

WRIT PETITION NO.7039 OF 2024

Suryabhan Dhanuji Gedam

Vs.

Additional Commissioner, Nagpur Division, Nagpur and others

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

Court's or Judge's orders.

Shri V.N. Morande, Advocate for petitioner.

Shri N.S. Autkar, AGP for respondent nos.1 to 3.

Ms Kirti Satpute, Advocate for respondent no.4.

CORAM : M.W. CHANDWANI, J.

DATE : 25.03.2026.

1. Heard Shri Morande, learned counsel for the petitioner, Shri N.S. Autkar, learned AGP for respondent Nos.1 to 3 and Ms Kriti Satpute, learned Counsel for respondent No.4. None appears for respondent no.5 though served.

2. The petitioner is aggrieved by the order dated 13.02.2024 passed by respondent no.1-the Additional Commissioner, Nagpur Division, Nagpur in Appeal No.111/LND-10/2022 thereby upholding the order dated 19.04.2022 passed by respondent no.2 – the Additional Collector, Gadchiroli in Appeal No.21/LND-10/2021 wherein the order dated 15.07.2021 passed by respondent no.3 – the Tahsildar, Gadchiroli (for short, “Mamlatdar”) in Revenue Case No.01/LND-10/2018-19 was upheld directing the petitioner to remove obstruction and make pathway

accessible to the field of respondent no.4 – Nilkhant Motiram Pendam from the field of petitioner.

3. The petitioner is the original non-applicant no.1, respondent no.4 is the original applicant and respondent no.5 is the original non-applicant no.2.

4. The main contention of the petitioner is that the Mamlatdar has not adhered to the principles of natural justice, as he did not afford opportunity to the petitioner to cross-examine the witnesses of respondent No.4 and to lead their evidence.

5. Thereafter, when an appeal was filed by the petitioner, before the Additional Collector, the contentions of the petitioner were not considered and the order passed by the Mamlatdar was upheld. Lastly, when the revision application was filed, the Additional Commissioner rejected the same, consequently confirming the order passed by the Mamlatdar.

6. Having gone through the record, there appears no dispute that such opportunity was not given by the Mamlatdar. However, the record indicates that Mamlatdar has relied upon the spot inspection report prepared by the spot inspection committee. Moreover, the Mamlatdar has not given any opportunity to the petitioner to cross-examine respondent no.4.

7. The learned AGP so also the learned Counsel for respondent nos.1 to 3 submit that the petitioner is to be blamed for such status, inasmuch as, he did not appear for spot inspection inspite of the notice issued by the Mamlatdar. He further did not seek for an opportunity to cross-examine any witness, and therefore, the Mamlatdar proceeded further.

8. The learned Counsel for petitioner has invited my attention to the judgment passed by the co-ordinate bench of this Court in the case of ***Sudhir Yashwant Dhangade V/s Ankush Kashiram Bole and others***¹ to contend that in such scenario, where the proceedings are under the provisions of Mamlatdar's Courts Act, 1906 (for short, "**the Act of 1906**"), the non-applicant (petitioner herein) is not required to file any application to cross-examine the applicant's witnesses (respondent no.4 herein). This Court in identical situation has, by referring to the provisions of the Act of 1906 held thus :

"10. It is thus evident that the Act specifically confers powers on the Mamlatdar to record evidence. Hence, the Court presided over by the Mamlatdar, would be a 'Court' within the meaning of Section 3 of the Indian Evidence Act and provisions of Section 135, 136, 137 and 138 of the Indian Evidence Act would be applicable to the proceedings under Section 5 of Mamlatdars Court Act.

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.

9. Thus, the co-ordinate bench of this Court has taken a view that right to cross-examine being legal right, the persons like the petitioner is not required to file any application to cross-examine the witness. The obligation to permit cross-examination is upon the statutory authority who has recorded evidence. Thus, it is expected in the proceedings under the Act of 1906 that when the Mamlatdar records a statement of applicant (respondent no.4 herein) and his witnesses, he should afford the non-applicant opportunity to cross-examine the witnesses meaning thereby

that he should fix the matter for cross-examination of applicant's witnesses. If the non-applicant fails to cross-examine the applicant's witnesses, the Mamlatdar may then proceed further on the count that despite giving opportunity, the non-applicant failed to avail the same.

10. In the present case, admittedly no such procedure has been followed. The order passed by the authorities, therefore, are unsustainable.

11. The Writ Petition is accordingly partly allowed. The order dated 13.02.2024 passed by the Additional Commissioner, Nagpur Division, Nagpur in Appeal No.111/LND-10/2022 thereby upholding the order dated 19.04.2022 passed by the Additional Collector, Gadchiroli in Appeal No.21/LND-10/2021 and the order dated 15.07.2021 passed by the Tahsildar, Gadchiroli, in Revenue Case No.01/LND-10/2018-19 are hereby quashed and set aside.

12. The Revenue Case No.01/LND-10/2018-19 is remanded back to the Tahsildar, Gadchiroli to consider afresh in terms of the provisions of the Act of 1906 as also in terms of the judgment passed by the Co-ordinate Bench of this Court in the case of Sudhir Yashwant Dhangade (supra).

13. The parties shall appear before the Tahsildar, Gadchiroli on 06.04.2026.

14. The Tahsildar, Gadchiroli shall decide the revenue case as early as possibly preferably within a period of three month from 06.04.2026.

15. Writ Petition is disposed of in above terms.

(M.W. Chandwani, J.)

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