



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

**Writ Petition No.491 of 2005**

Smt. Mulabai W/o Jainarayan Agrawal,  
Aged 56 years,  
Occu. Agriculturist,  
R/o Hiwarkhed,  
Tq. Telhara,  
District Akola.

...Petitioner

Versus

1. The Additional Commissioner,  
Amravati Division,  
Amravati.
2. Smt. Kamalabai W/o Nandkishor Lakhotiya,  
Aged 47 years,  
Occu. Household work.
3. Shri Nandkishor S/o Nathmalji Lakhotiya,  
Aged 56 years,  
Occu. Business.

Both respondents No.2 and 3  
r/o Hiwarkhed, Tq. Telhara,  
District Akola.

4. Shri Jainarayan S/o Ratanlalji Agrawal.

5. Dr. Murlidhar S/o Bajranglalji Agrawal,  
Aged 56 years.
6. Gulabchandra S/o Karnachandra Agrawal,  
Aged 61 years.
7. Mohanlal S/o Bansilal Medhani,  
Aged about 65 years.

Respondents No.4 to 7  
r/o Hiwarkhed, Tq. Telhara,  
District Akola.

...Respondents

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Shri A.M. Ghare, Counsel for Petitioner.  
Shri Anoop Parihar, AGP for Respondent No.1.  
Shri J.T. Gilda, Counsel for Respondent No.2.

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**Coram : R.C. Chavan, J.**

**Dated : 1<sup>st</sup> December, 2006**

**Oral Judgment :**

1. Rule, returnable forthwith. By consent, heard finally.
2. The main grievance of the petitioner in this case is that the learned Sub-Divisional Officer, Akot, decided the proceedings before him without giving the petitioner an

opportunity to tender his evidence. The original record was called and the order-sheets show that the matter was adjourned on 29-11-2001 to 21-1-2002. There are no order-sheets from 21-1-2002 to 11-10-2002. The order-sheet dated 11-10-2002 shows that the notices were required to be issued to the respondents. Thereafter, there is further order in the right-hand margin of order-sheet dated 30-10-2002 with an endorsement that *"N.A.No.1, 3 & 5, notices not claimed, hence served. Placed on record. N.A.No.2 & 4, notices are duly served. Placed."* Thereafter, the learned Sub-Divisional Officer proceeded to take the evidence of the respondents and decided the matter. According to the learned counsel for the petitioner, the envelopes, which had been stated to be "refused", are not placed on record. He stated that the petitioner was contesting the proceedings all along and, therefore, had the petitioner come to know of the proceedings, he would have definitely participated.

3. The learned counsel for respondent No.2 states that the notices were in fact served on the petitioner and

the petitioner wasted his opportunity of hearing.

4. Ordinarily, the question of service of notice has to be decided by the Presiding Officer of the Court concerned by mentioning in the body of the order-sheet as to what he felt about the service of notice. The recitals in the right-hand margin create a doubt as to whether the notices were in fact served or not, particularly so because the envelopes are not on record. In view of this, in order to ensure that the petitioner does not have a grievance that he was not heard, it would be appropriate to pass the following order :

5. The petition is allowed. The impugned orders passed by the Revenue Authorities are quashed and set aside and the matter is remanded back for fresh inquiry by the Sub-Divisional Officer, Akot, which he shall complete within a month from the date of this order. Both the parties are directed to appear before the Sub-Divisional Officer, Akot, without any notice, on 19-12-2006.

The learned counsel for the parties undertake that their clients will not seek any adjournment before the Sub-Divisional Officer, except on the ground of death or illness

of such a nature, which immobilizes the parties.

It is made clear that the merits of the matter have not been touched by this Court and the Authority below shall decide the matter afresh on the evidence that may be tendered before it.

6. Rule is made absolute in the aforesaid terms. There shall be no order as to costs.

**JUDGE**

PDL/-