

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CIVIL APPELLATE JURISDICTION**

CIVIL WRIT PETITION NO. 13654 OF 2024

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1. Bapuso Bhau Khot
 2. Balaso Bhau Khot
 3. Rajendra Surendra Khot
 4. Ravindra Surendra Khot
 5. Satishkumar Mahavir Khot
 6. Rushikesh Bharat Khot
 7. Mahavir Anna Chougule
 8. Adinath Anna Chougule
 9. Shantinath Anna Chougule
 10. Ashok Nabhiraj Khot
 11. Amol Tatoba Hujare
 12. Kumar Dattatraya Khude
- ... Petitioners

Vs.

1. Dada Balu Khot
2. Kumar Balu Khot
3. Bhupal Balu Khot
4. Sukumar Balu Khot
5. Ramsaheb Balu Khot

6. Sou. Vimal Babaso Patil

7. Ld. S.D.O. Karveer Division, Kolhapur

8. Ld. Tahsildar of Karveer ... Respondents

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Mr. Manoj Patil a/w Akash Murudkar, Kaustubh Rayrikar for the petitioners.

Mr. Sandeep Koregave a/w Supriya Koregave for Respondent Nos. 1 to 6.

Mr. Sanjay D. Rayrikar, AGP for Respondent Nos. 7 and 8 – State.

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CORAM : SHAILESH P. BRAHME, J.

RESERVED ON : 21.09.2026.

PRONOUNCED ON : 30.09.2026.

JUDGMENT :

. Rule. Rule is made returnable forthwith with the consent of the parties. Heard both parties.

2. Being aggrieved by the judgment and order dated 28.02.2024 passed by the Sub Divisional Officer allowing the revision and thereby quashing order dated 24.01.2024 passed by the Mamlatdar Court, the petitioners who are the original applicants have preferred this writ petition.

3. Learned counsel Mr. Manoj Patil appearing for the

petitioners submits that the impugned judgment is perverse because panchanama conducted on 23.02.2024 and 19.01.2022 would clearly indicate existence of the road in between Gat No. 218 and 225. It is submitted that Revisional Court committed error of jurisdiction in re-appreciating the evidence and arriving at a different conclusion than that of Mamlatdar. It is submitted that for showing existence of the approach road in between Gat Nos.218 and 225, revenue records or the maps may not be available but still the road can be made out. The photographs produced on record have not been dealt with by the Revisional Authority.

4. *Per contra*, learned counsel Mr. Koregave would submit that the Application under Section 5 of the Mamlatdars' Courts Act was not tenable because there existed no road. It is further submitted that two alternate roads are available from the Northern side, which are being used since many years. It is further submitted that owners of land Gat No. 207 and 220 is common and the alternate roads are being used by them. It is further submitted that the Government has provided grants for Northern side road located abetting Gat No. 207. It is further submitted that no evidence was produced to disclose existence

of the road and the petition is liable to be dismissed.

5. I have considered rival submissions of the parties. I have gone through panchanama dated 19.01.2022 as well as 23.02.2024. The statements of the witnesses and the photographs of the google maps are produced on record. The petitioners are claiming approach road in between Gat No. 218 and Gat No. 225. The respondents are the owners of Gat No.225. The petitioners are the owners of Gat Nos. 219 to 224. No village map or revenue record is produced by petitioners showing existence of the road claimed by the them.

6. The claim of the petitioners is that there existed approach road of 12 feet, South-North to connect East-West Sangavadewadi to Kodoli road, which is of 20 feet road. Panchanama conducted on 19.01.2022 would clearly indicate that obstruction is created on the road which connects Jakubai Panand and Gat No.225. A more elaborate panchanama was conducted on 23.02.2024 which would clearly indicates in its map as well as text the existence of the road claimed by the petitioners and the obstruction in it. This panchanama is discarded by the Revisional Authority. The statements of the

witnesses which would support the claim of the petitioners are also overlooked by the Revisional Authority in holding that there existed no approach road as claimed by the petitioners, which is grave error of jurisdiction.

7. The Revisional Authority accepted the theory of the respondents regarding existence of alternate road on the Northern side of Gat No.207. However, the issue before the Mamlatdar Court was as to whether there existed any road in between Gat No. 218 and 225. Mere existence of some road for common user of Gat No.220 or 207 on the Northern side would not nullify the claim of the petitioners. I find that the petitioners have produced comparatively more evidence to indicate existence of the road claimed by them. The Revisional Authority committed perversity in taking different view.

8. The funds given by the Government for construction or the repair of the road which runs from Northern boundary of Gat No. 207, is not sufficient to deny the existence of the road claimed by the petitioners. The Google maps produced on record would also indicate that there was a road and the possibility of destroying it by the respondents cannot be ruled

out.

9. My attention is adverted to the judgment of co-ordinate bench in case of **Anjali w/o Vitthal Ingole Vs. Sub-Divisional Officer, Washim and Anr.** (2015) 2 Mh.L.J. 651 wherein the scope of the Revisional Authority under Section 23(2) of the Mamlatdars' Courts Act has been stipulated. Having understood the scope, as per the ratio laid down therein I find that Revisional Authority in the present case has exceeded in its jurisdiction. Reliance is placed on the judgment of the co-ordinate bench in the case of **Naanasaheb Yashwant Kalekar & Ors. Vs. Dattatraya Maruti Darandale** (in Writ Petition No. 3421 of 2023, decided on 13.09.2023) to buttress that village map is not the only material which can be said to be available for showing way. I have gone through paragraph no.17 of the judgment and in the present case also I have already observed that other material is produced by the petitioners to make out existence of the road.

10. Learned counsel for the respondents has relied on the judgment of **S.P Chengal Varaya Naidu (dead) by LRs. vs. Jagannath (dead) by LRs. and Ors.** (1994) 1 SCC 1. The law

laid down therein is undisputed. If the judgment is obtained by fraud, it has to be treated as nullity and it can be questioned in collateral proceedings. However, no case is made out by the respondents that petitioners had obtained judgment of the Mamlatdar by exercising any fraud. This judgment will not help the respondents.

11. The proceedings before the Mamlatdar Courts are summary in nature and those are resorted to as a stopgap arrangement. The aggrieved party can always resort to substantial proceedings to establish the rights and liabilities. I find that impugned order is unsustainable.

12. I therefore, pass following order.

ORDER

- (i) Rule is made absolute in terms of prayer clause (b).
- (ii) There shall be no order as to costs.

(SHAILESH P. BRAHME, J.)

13. After pronouncement of the judgment, the learned counsel appearing for the respondents seeks suspension of

execution of the order for a period of eight (8) weeks so as to enable the respondents to approach the Apex Court. It is submitted that there was no stay to the order passed by Sub-Divisional Officer on 28.02.2024.

14. The learned counsel appearing for the petitioners opposes the request.

15. The parties are agriculturists. I have already observed that the petitioners have made out the case of existence of the road in between Gat Nos.218 and 225 and the obstructions therein. No case is made out to suspend the operation of the judgment passed today. The request is rejected.

(SHAILESH P. BRAHME, J.)