

FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4918/2017

Office Notes, Office Memoranda of Coram, Appearances, court's orders or directions and Registrar's orders	Court's or Judge's orders
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Mr. Bhushan Mandlik i/b. S. S. Patwardhan for the petitioner

Mr. S. H. Kenkal, AGP for the Respondent Nos.3 and 4.

CORAM : K. K. TATED, J.

DATE : JUNE 8, 2017

P.C.:

1. Heard. By this petition under Article 227 of the Constitution of India the Petitioner challenges the judgment dated 15.11.2016 passed by the learned Sub Divisional Officer, Mangalwedha Sub Division, Mangalwedha in Revision No.13/2015 and judgment dated 31.12.2014 passed by respondent No.4 in application No. JM-2/road/SR/6/2013.

2. It is the case of the petitioner that in the present proceedings, the respondent original applicant filed application u/s.5 (2) of the Mamlatdar Court Act, 1906 before the learned Tahasildar, Sangola for a right of way to their land

being Gut No.16 admeasuring 53Rs and Gut No.15 admeasuring 61Rs. He submits that the learned Tahasildar passed the impugned order only on the basis of panchanama carried out by him. Hence, the order passed by the Tahasildar is liable to be set aside. He submits that even the Appellate Authority has not considered the objection raised by the petitioner in Revision No.13/2015.

3. The learned counsel for the petitioner further submits that even the Appellate Authority has failed to consider the documents produced by the petitioner on record in Revision No.13/2015. He submits that both the Authorities below ought to have held that the respondent original applicant failed to produce on record any evidence to show that the road was in existence for last several years. He submits that in the interest of justice, this Hon'ble Court be pleased to set aside both the impugned orders passed by the Authority allowing the respondent to use the road to reach their gut numbers as stated above.

4. It is to be noted that in the present proceedings the petitioner has already instituted Regular Civil Suit No.41/2016 in the court of Civil Judge, Junior Division, Sangola for setting aside

the order dated 31.12.2014 passed by the learned Tahasildar u/s. 5(2) of the Mamlatdar Court Act, 1906.

5. The Tahasildar has passed the impugned order on the basis of the panchanama prepared by the Authority. In the said panchanama, it was specifically stated that a road was in existence and same was encroached upon by the petitioner. These facts were considered by the Appellate Authority.

6. Considering these facts and as the petitioner has already filed civil suit being Regular Civil Suit No. 41/2015 for setting aside the order dated 31.12.2014 passed by the learned Tahasildar, I do not find any reason to entertain the present Writ Petition under Article 227 of the Constitution of India. Hence, same stands rejected.

JUDGE