



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.6417 OF 2022

1. Sundar s/o Baburao Gore,
Age 63 years, Occu. Agriculture
 2. Amar s/o Dnyandeo Jagtap,
Age 30 years, Occu. Agriculture,
- Both R/o. Aashiv Tal. Ausa Dist, Latur. ..Petitioners

Versus

1. Smita w/o Wamanrao Kadam,
Age 52 years, Occu. Agriculture,
2. Gopal s/o Nivrutti Jagtap,
Age 26 years, Occu. Agriculture,
3. Mohan s/o Baburao Gore,
Age 70 years, Occu. Agriculture,
4. Appasaheb s/o Manikrao Kadam,
Age 52 years, Occu. Agriculture,
5. Rajendra s/o Pandhari Dudhbhate,
Age 50 years, Occu. Agriculture,
6. Mahadeo s/o Limbaji Kadam,
Age 56 years, Occu. Agriculture,
7. Bhaskar s/o Shrimant Bandgar,
Age 35 years, Occu. Agriculture,
8. Pravin s/o Prakash Kulkarni,
Age 55 years, Occu. Agriculture,
9. Vishal Dnyandeo Bansode,
Age 33 years, Occu. Agriculture,

(Resp. No. 1 to 9 R/o. Kamalpur
Tal. Ausa Dist. Latur.)
10. Sangita w/o Rajkumar Kakde,

Age 51 years, Occu. Agriculture,

11. Rajendra s/o Pandurang Jagtap,
Age 40 years, Occu. Agriculture,

12. Sudhir s/o Subhash Giri,
Age 42 years, Occu. Agriculture,

13. Vitthal s/o Gulab Giri,
Age 65 years, Occu. Agriculture,

14. Shankar s/o Gulab Giri,
Age 68 years, Occu. Agriculture,

15. Babruvan s/o Sampat Giri,
Age 62 years, Occu. Agriculture,

16. Manik s/o Limbaji Kadam,
Age 64 years, Occu. Agriculture,

(Resp. No. 12 to 16 all R/o. Kamalpur
Tal. AUSA Dist. Latur.)

17. Sub-Divisional Officer,
AUSA - Renapur, Tal. AUSA Dist. Latur.

18. Tahsildar,
AUSA, Tal. AUSA, Dist. Latur. ..Respondents

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Mr. S. V. Natu, Advocate for Petitioners.

R. R. Tandale, AGP for Respondent Nos.17 and 18.

Mr. N. B. Khandare, Advocate for Respondent No.1.

Mr. Raghvendra Bhise h/f Mr. N. S. Shah, Advocate for Respondent
Nos.2, 5 to 7 to 11.

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CORAM : S. G. CHAPALGAONKAR, J.

DATED : 12th AUGUST 2024.

JUDGMENT:-

1. Rule. Rule made returnable forthwith. By the consent of the parties, matter is taken up for final hearing at the stage of admission.

2. The petitioners impugn order dated 12.05.2022 passed by the Sub Divisional Officer, AUSA-Renapur in Revision No.2020/ROR/A-22, by which learned Sub Divisional Officer remanded matter back for re-consideration to the Mamlatdar.

3. Mr. Nattu, learned Advocate appearing for the petitioners invites attention of this Court to the panchanama dated 11.03.2020 to contend that in pursuance of the application made by petitioners under Section 5 of the Mamlatdar's Courts Act, respondents had agreed to grant customary way to the petitioners with rider that measurement be carried out through Survey Authorities and boundaries of survey number shall be fixed. He submits that in pursuance of such an agreement, the Mamlatdar had passed order dated 16.09.2021 directing grant of Aashiv-Kamalpur Shiv Rasta as claimed by the petitioners after fixation of boundaries through Deputy Superintendent of Land Record. Mr. Nattu would further submit that while steps in pursuance of order of Mamlatdar were taken, Revision Application was filed before the Sub Divisional Officer. He endeavours to contend that infact Revision Application was not physically tendered, but photocopy was forwarded through mobile application. He would submit that although as many as 17 persons are shown as Revision Petitioners, only 5 signatures appears on memo. However, Sub Divisional Officer entertained such revision and remanded matter back to the Mamlatdar on the basis of erroneous observations.

4. Per contra, Mr. Khandare, learned Advocate appearing for respondent no.1 submits that very application filed by the petitioners is defective. No cause of action is discernible from the contents of the application. Even, particulars of existing customary way are absent. The panchanama was not drawn in conformity

with the requirements of Mamlatdar's Courts Act. It does not show existence of customary way. The learned Sub Divisional Officer rightly remanded matter back, by which granted opportunity to both the parties. He submits that no jurisdictional error can be found in the order passed by the Sub Divisional Officer.

5. To counter Mr. Natu, learned Advocate appearing for the petitioners submits that the Sub Divisional Officer has made certain observations while remanding the matter back, which takes away jurisdiction of Mamlatdar to deal with each and every issue and Mamlatdar is not left free hand to delve into the contentions of parties. Therefore, observations of Sub Divisional Officer to that extent can be expunged or clarification be given that such observations shall not come in way of Mamlatdar while dealing with the matter.

6. Having considered submissions advanced, it is apparent that application submitted by the petitioners, *prima facie*, not in conformity with the requirements of the provisions contained under Mamlatdar's Courts Act. The panchanama drawn by the Circle Officer sans requisite details to find out existence of customary way, as claimed by the petitioners. The Mamlatdar has not caused any independent enquiry. He has not personally visited the spot or recorded statements of witnesses. There is nothing on record to discern, if the customary way as claimed by the petitioners was in existence and that has been obstructed within a period of six months prior to institution of proceeding invoking Section 5 of the Mamlatdar's Courts Act.

7. Although Mr. Natu has rightly pointed out some procedural defects on the part of the Sub Divisional Officer while entertaining

Revision, it would be in the interest of parties that Mamlatdar grants fair opportunity to parties to put up their stand and cause in-depth enquiry to find out whether customary way as claimed by the petitioners was in existence and that has been obstructed by the respondents. As rightly pointed out by Mr. Natu, the Sub Divisional Officer should not have made observations as regards to the factual aspects, particularly in relation to the report dated 04.03.2022 submitted by the Mamlatdar, which was never supplied to the petitioners. In that view of the matter following order is passed:

ORDER

- a. Writ Petition is partly allowed.
- b. The order dated 12.05.2022 passed by the Sub Divisional Officer, Ausa-Renapur in Revision No.2020/ROR/A-22 is maintained with rider that observations on factual aspects shall not come in way of Mamlatdar while deciding the proceeding.
- c. The Mamlatdar shall follow the procedure in terms of Sections 7 to 15 of the Mamlatdar's Courts Act, personally carry spot inspection, record statements of relevant witnesses and also collect necessary maps, village record and pass order giving due regards to the village maps, survey maps and spot inspection.
- d. The Mamlatdar is expected to pass fresh order on its own merits within a period of six months from the date of this order.
- e. Parties shall appear before the Mamlatdar on 30.08.2024, if already not appeared in pursuance of the order passed by the Sub Divisional Officer.

- f. Writ Petition stands disposed of.
- g. Rule is made absolute in above terms.

(S. G. CHAPALGAONKAR)
JUDGE

Devendra/July-2024