

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2855 OF 2024

Rajendra Sopan Dhiwar and Ors.

.. Petitioners

Versus

Bhagwan Sangram Pardeshi and Ors.

.. Respondents

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- Mr. Girish Agarwal a/w. Mr. Shubham Jangam, Advocate for Petitioners.
- Mr. J. P. Patil, AGP for Respondent – State.

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CORAM : MILIND N. JADHAV, J.

DATE : MARCH 04, 2024

P.C.:

1. Heard Mr. Agarwal, learned Advocate for Petitioners and Mr. Patil, learned AGP for Respondent – State. None appears for the private Respondents.

2. The present Writ Petition though impugns order passed in Miscellaneous Civil Appeal No.125 of 2023, it is preceded by order dated 11.08.2020 passed under Section 5 of the Mamlatdars Court Act, 1906 (for short '**the said Act**') followed by order in Revision passed under Section 23 of the said Act and order passed below Exhibit-5 in the suit filed by the Petitioners / Plaintiffs.

3. Entire submission centers around the panchnama dated 04.12.2020 carried out by the Tahsildar pursuant to the proceedings determined under Section 5 of the said Act. Admittedly this panchanama is carried out by the Tahsildar after the Section 5 order

was passed in the presence of all parties which is denied by Plaintiffs.

4. Mr. Agarwal would submit that the said panchanama and inspection was carried out behind the back of the Petitioner and in that view of the matter it prompted the Petitioners to file the Civil Suit.

5. However, in the analysis carried out by the Revisional Authority under Section 23 of the said Act, it is noted to the contrary in its order dated 14.01.2022. The Plaintiffs undoubtedly would be entitled to challenge the panchnama by summoning the authority who conducted the same since the jurisdiction of the Civil Court cannot be ousted despite orders passed under Section 5 and Section 23 of the said Act.

6. In that view of the matter, the twin Exhibit-5 orders passed by the Trial Court and the Appellate Court are sustained and all contentions of the Petitioners i.e. Plaintiffs are expressly kept open to challenge the panchnama dated 04.12.2020 strictly in accordance with law.

7. With the above directions, twin orders passed below Exhibit-5 are sustained without opining anything on the merits and the learned Trial Court is also directed by this Court to adjudicate and decide the suit proceedings strictly on merits i.e. evidence that will be led by the parties without being influenced by any of the observations and findings in the orders passed below Exhibit-5 which are *prima*

facie in nature.

8. In view of the request made by Mr. Agarwal, hearing of Regular Civil Suit No.78 of 2022 is expedited and learned Trial Court is requested by this Court to dispose of the said suit as expeditiously as possible and in any event within a period of one and half year from today.

9. With the above directions, Writ Petition is disposed.

H. H. SAWANT

[MILIND N. JADHAV, J.]

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