

AGK

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

WRIT PETITION NO.8719 OF 2016

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Samrat Group, through its partner
Mukesh Hansraj Patel

... Petitioner

V/s.

Kondiba Namdev Takalkar & Anr.

... Respondents

Mr. Drupad S. Patil for the petitioner.

Mr. Vilas B. Tapkir for respondent No.1.

Mr Saiprasad Dudhane with Mr. Arunkumar B. Kamer.
i/by Arunkumar & Associates for respondent No.2.

Mr. R.S. Pawar, AGP for State.

CORAM : AMIT BORKAR, J.

DATED : JANUARY 24, 2024

P.C.:

1. The opponent in a proceeding under Section 5 of the Mamlatdar's Courts Act, 1906 is challenging order passed by the Revisional Authority directing the petitioner to remove impediment on the road alleged by the respondent which causes obstruction for their use of their property for agricultural purposes.

2. Respondent No.1 filed an application before the Tehsildar for removal of construction caused by the compound of the petitioner. On 14 June 2011, panchanama was prepared in presence of three persons. The panchanama contains a statement that the road from

Gat No.31/3 and 29/1 is in existence for long time. Based on the said statement, Mamlatdar directed removal of impediment from House Property Nos.179, 195, 174 on the South side and also from Gat No.30.

3. As the order did not contain the property of the petitioner, respondent No.1 filed Revision before the Sub-Divisional Officer. During pendency of the Revision, respondent No.2 filed an application for impleading himself as beneficiary of the order. The Sub-Divisional Officer by the impugned order, relying on panchanama, directed the petitioner to remove obstruction from his property.

4. On perusal of both the orders, it appears that only material relied by the Authorities below is panchanama. The purpose of drawing panchanama is to bring factual situation existing on site on record. The purpose of panchanama is not to record historical events or the information regarding past events. Except panchanama, no other material was placed on record by the respondent No.1.

5. Moreover, the petitioner raised a contention that Gat NO.29 is converted into non-agricultural purpose. Another contention raised was to the effect that the road on Gat No.29 was constructed by the petitioner for his own use. He invited my attention to the recital in the sale deed which states that the road on the Western side used by the vendor of respondent No.1 and respondent No.1 shall be used by respondent No.1. The aforesaid contentions have not been dealt with by the Authorities below.

Moreover, except panchanama no other material was produced record.

6. Hence, it is necessary that the Tehsildar shall re-consider the application of respondent No.1 and shall pass appropriate order after taking into consideration the contentions raised by the petitioner and after granting opportunity of hearing to both sides.

a) The impugned order dated 27 May 2016 passed in RTS Revision No.47 of 2016 by the Sub-Divisional Officer, Khed is quashed and set aside;

b) The proceedings are remitted back to the Tehsildar, Khed for consideration afresh;

c) Since the order of Tehsildar merged with the order of the Sub-Divisional Officer, the Tehsildar shall decide the application of respondent No.1 afresh;

7. The writ petition accordingly stands disposed of. No costs.

(AMIT BORKAR, J.)