

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

WRIT PETITION NO. 2101 OF 2024

Ashok @ Ashokrao Anandrao Naikwade ...Petitioner
Versus
The State Of Maharashtra Through Its
Secretary And Ors ...Respondents

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Mr. Ganesh Gole a/w Mr. Viraj Shelatkar, for the Petitioner.

Ms. V. S. Nimbalkar, A.G.P. for the Respondent No. 1 and 2– State.

Adv. Rokade Narayan Gopinath a/w Adv. Abhay Suryawanshi, for the Respondent.

Smt. Bharati M.R., Divisional Officer, Tal. Dindori Dist. Nashik.

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CORAM : AVINASH G. GHAROTE, J.
DATE : 12th JULY, 2024

P.C.:

1. Heard the learned counsel for the petitioner. The learned counsel for the respondent nos. 3 to 6 raises the plea, that the proceedings filed by them under Section 5 of the Mamlatdar's Courts Act, 1906 (the MM Act), before the Tehsildar Dindori Nashik, were transferred by the SDO, in exercise of the power under Section 6 to the the MM Act at Village Pet, on account of which both orders of Mamlatdar as well as the order of SDO are

without jurisdiction. It is not disputed, that the Mamlatdar at village pet, had right to entertain an application under Section 5 of the the MM Act. It is also not disputed that the respondent Nos. 3 to 6 consequent to the transfer of the proceedings under Section 5, have participated in the proceedings before the Mamlatdar at village Pet, which was without demour regarding any objection as to the territorial jurisdiction. The petitioner herein, who are the original defendants also participated without raising any objection. That being the position, it is clearly apparent, that the objection to the territorial jurisdiction, having not being raised at any point of time earlier, is not permissible to be raised in these proceedings for the first time. The objection is therefore rejected.

2. The petition questions the Order dated 31.01.2024, (page 15) by the SDO under Section 23 (2) of the the MM Act in revision by which the Application filed under Section 5 of the MM Act by the plaintiff/respondent no. 3 to 6 which was rejected by the Order dated 26.05.2022, which was rejected, has been setaside and allowed, the relief claimed under Section 5, grante

3. The learned counsel for the respondent nos. 3 to 6, in reference to the Panchanama dated 25.11.2020, (page 94) fairly

admits, that the same does not indicate existence of any road. On account of this, the application itself was not maintainable.

4. That apart, the learned counsel for the respondent Nos. 3 to 6, has not been able to point out to me, any document to indicate existence of a way through the land of Gat No. 939. On the contrary the cross examination at page 78 of the respondent No.4/Sayaji Pingle, indicates that to the west of Gat No. 940 which is owned by the wife of the respondent No.4, is Gat No. 941 which is owned by the Original Plaintiff, beyond which Gat no. 942 is also owned by his cousin, which has road on the western side to approach. The learned SDO, in the impugned order does appear to have taken the entire position into consideration as well as the panchanama in its proper perspective which indicate absence of the road, in light of which the order dated 31.01.2024, passed by the learned SDO, is hereby quashed and set aside and the Order of the Mamlatdar is maintained.

5. The petition is allowed in the aforesaid terms. No order as to costs.

(AVINASH G. GHAROTE, J.)