



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

WRIT PETITION NO. 607 OF 2025

1. Hanumandas s/o Dwarkadas Soni,
Died Through his L.Rs.
- 1/1. Vinod s/o Hanumandas Soni
Age : 62 years, Occu. : Business,
R/o. : Kacchi Bazar, Parbhani, Dist. Parbhani
- 1/2. Anil s/o Hanumandas Soni
Age : 57 years, Occu. : Business,
R/o. : Kacchi Bazar, Parbhani, Dist. Parbhani
- 1/3. Sunil s/o Hanumandas Soni
Age : 56 years, Occu. : Business,
R/o. : Kacchi Bazar, Parbhani, Dist. Parbhani
- 1/4. Badrinarayan s/o Hanumandas Soni
Age : 54 years, Occu. : Business,
R/o. : Kacchi Bazar, Parbhani, Dist. Parbhani
- 1/5. Dhanraj s/o Hanumandas Soni
Age : 50 years, Occu. : Business,
R/o. : Kacchi Bazar, Parbhani, Dist. Parbhani .. **Petitioners**
(Orig. defendants)

Versus

1. Sanjay s/o Chothmal Chandak
Age : 55 years, Occu. : Business,
R/o. : Kacchi Bazar, Parbhani, Dist. Parbhani
2. The Commissioner,
Municipal Corporation,
Parbhani, Office of Municipal
Corporation, Parbhani. .. **Respondents**

Mr. Milind M. Patil (Beedkar), Advocate for the Petitioners.
Mr. Swapnil S. Rathi, Advocate for Respondent No. 1.

CORAM : KISHORE C. SANT, J.

DATED : 14th JANUARY, 2025.

ORAL JUDGMENT :-

. Heard.

2. Rule. Rule made returnable forthwith. By consent of the parties taken up for final hearing.

3. Though respondent No. 2 is a party to the suit, but his interest is not involved in any way and no notice is necessary to respondent No. 2.

4. By way of this petition, the petitioners are challenging the orders passed by the learned C.J.S.D., Parbhani on an application below Exh. 248 dated 18.12.2024 and below Exh. 1 dated 02.01.2025 in R.C.S. No. 226/2018. By way of application below Exh. 248 the petitioners have made prayers which read as below :

“It is therefore prayed that, application may kindly be allowed as

(1) To call the office bearers of the State Ministry Mumbai along with concerned records.

(2) Secretary of the Urban Ministry may kindly be called as a witness or any other person authorized by Secretary may be called as a witness along with concerned records.

(3) To call the witness Kondiba Kumbhar who was then

Chief Officer of Municipal Council, Parbhani along with records.

(4) To call the witness Abdul Aziz who was the one of the witness in the said suit.

(5) The Superintendent of Land Record may kindly be called along with original sheet Number 8, CTS No. 24, 25 & 26 situated at Kacchi Bazar, Parbhani and the record of the existing roads may kindly be called in the present matter along with record.

(6) It is also necessary to call Municipal Commissioner or any person authorized by him along with record pertaining to the road as disputed in RCS No. 216/2002 decided on 24/11/2004 by C.J.J.D. Parbhani along with the record pertaining to the road as disputed in RCS No. 216/2002.”

5. The said application came to be rejected by way of order dated 18.12.2024. The learned Trial Judge not only rejected an application, but also expedited the suit. While passing the order dated 02.01.2025, the learned Judge has observed that, the defendants are adopting dilatory tactic when the suit is expedited and also passed an order calling evidence of the defendant while rejecting prayer for an adjournment. The application is rejected with cost of Rs. 1,000/- (Rs. One Thousand only).

6. The learned advocate Mr. Patil (Beedkar) for the petitioners argued that, by way of application below Exh. 248 the petitioners had made reasonable prayers as the examination witness is necessary to ascertain the factual position about the map etc. of the area. Further, he submits that the learned Trial Judge without any reason has made the suit time bound without there being any order passed by any of the superior Courts and now passed an order dated 02.01.2025. He submits that the Superintendent of Land Record is necessary to be examined as the plaintiff has produced on record original sheet No. 8 in respect of CTS Nos. 24, 25 and 26. He thus prays for allowing the writ petition by setting aside both these orders.

7. The learned advocate Mr. Rath for respondent No. 1 vehemently opposes the petition. He submits that, from the prayer clauses 2 and 3 it is clearly seen that, there is no reason assigned as to why these witnesses are to be examined. No relevance is given. So far as prayer clauses 4, 5 and 6, he submits that those are also not material as town planners map is also produced by the defendants during the evidence of the defendants. The learned advocate further submits that, this Court in earlier round of litigation i.e. in Writ Petition No. 11686/2024 dated 14.11.2024 has already requested the learned Trial Court to decide the suit expeditiously and in that view the learned

Trial Court is justified in making the suit time bound. He further submits that, there is no sufficient reason assigned and prays for rejection of the petition.

8. This Court, looking at the prayers in the application below Exh. 248, finds that, the persons named in clause Nos. 1 to 4 it is clear as to how their evidence would be material looking to the nature of the suit. When the record is already on record about the town planning map etc. the prayer of the petitioners can be justified only to the extent of calling the Superintendent of Land Record or Municipal Committee or any authorized person by the Commissioner. The order below Exh. 248 is thus needs to be set aside to some extent. The petitioners shall call either person named in clause 5 or clause 6 as a witness. The learned Judge thereafter to issue summons. It will be for the petitioners to secure attendance of the witness within a period of one month from the date of such order.

9. So far as the order dated 02.01.2025 is concerned, this Court finds that the learned Judge has fixed the time schedule which has resulted in the order and further resulted in taking away the opportunity of the defendants. Fairness in the trial and proper opportunity to the parties is a basic feature of any just and fair trial. For this reason this Court set aside the order dated 02.01.2025. In

view of the fact that, the suit is of the year 2018, the suit is expedited. The learned Trial Court to decide the suit as early as possible and in any case before 30.06.2025.

10. The rule is made absolute in above terms.

11. Parties to act upon authenticate copy of this order.

(KISHORE C. SANT, J.)

PS.B.