



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

43 WRIT PETITION NO. 1426 OF 2023

ARUNA BHUJANG THORE
VERSUS
THE SUB DIVISIONAL OFFICER AND OTHERS

Mr.M.P. Tripathi, Advocate for the petitioner.
Mr.K.N. Lokhande, AGP for the respondent-State.
Mr.M.P. Kale, Advocate for respondent No.3.

CORAM : KISHORE C. SANT, J.
DATE : 13.01.2025

PC :-

01. This petition is filed challenging order passed by the learned Sub-Divisional Officer in Revision under section 23(2) of the Mamlatdars' Courts Act, rejecting revision application of the present petitioner, thereby confirming the order passed by the learned Tahsildar, Pathri, in proceeding under section 5(2) of the Mamlatdars' Courts Act. The private respondents approached the Tahsildar under section 5(2) of the Act praying for direction to the petitioner to remove obstruction to go to land Gat Nos. 128, 124, 125, 222, 157 and 126 of Devnandra-Manvat road. The land of the petitioner is land Gat No.127. The Tahsildar without following due procedure allowed the application directing the petitioner to remove obstructions on the road. In revision by the petitioner, the learned Sub-Divisional Officer passed order rejecting the revision

application.

02. The main ground raised by the petitioner is that the Tahsildar has not held sufficient enquiry, no panchanama in presence of the petitioner was drawn. Immediately, on filing of the say, the Tahsildar decided his proceedings. He submits that the learned Tahsildar has also not followed procedure under section 7 onwards while deciding the dispute. He thus prays for quashing and setting aside the impugned order.

03. Learned Advocate Mr.Kale vehemently opposed the petition. He submits that there is cart way available for going to Devnandra-Manvat road, which is obstructed by the petitioner. In panchanama, it is clearly recorded that the cart road is obstructed by the petitioner. He thus submits that both the authorities have rightly passed the judgment and order.

04. Considering the material on record, this Court finds that the Tahsildar has not given sufficient reasons while deciding the proceeding. It does appear that the panchanama drawn is without giving any notice to the petitioner. The learned Sub-Divisional Officer though has

considered the panchanama, has not considered this aspect. The ground raised by the petitioner in the revision i.e. ground No.5 that the Tahsildar has decided the dispute without spot inspection. The alleged spot inspection is prior to filing of the dispute.

05. This Court finds that there is substance in the arguments of learned Advocate for the petitioner. This Court finds that this is a fit case to remand the matter back to the Tahsildar for deciding the dispute afresh. Needless to say that the Tahsildar shall make spot inspection and draw panchanama in presence of the parties by giving proper notice.

06. With this, the following order :-

- (i) The writ petition is partly allowed.
- (ii) Proceeding of Rasta Case No. 2021/JAMA-1/ROR/Rasta is restored to the file of learned Tahsildar, Pathri for deciding a fresh.
- (iii) The learned Tahsildar to decide the case within three months from the date of receipt of order of this Court.
- (iv) All contentions of the parties are kept open.

[KISHORE C. SANT, J.]