

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

1000 WRIT PETITION NO. 1746 OF 2023

KANIFNATH JAGANNATH UBEDAL

VERSUS

THE STATE OF MAHARASHTRA THROUGH ITS PRINCIPAL SECRETARY
AND OTHERS

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Advocate for the Petitioner : Mr. Joshi Ajinkya Anand

AGP for Respondents/State : Mr. D.R.Korde

Advocate for Respondent No. 5 : Mr. Narwade Narayan B.

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CORAM : SIDDHESHWAR S. THOMBRE, J.

DATE : 16.12.2025

PER COURT :

1. Heard the learned Counsel for the respective parties.
2. By way of present petition, the petitioner assails the order dated 01.06.2021 by the Tahsildar/Mamlatdar, Shevgaon in Rasta Case No. 07 of 2021, whereby, the application filed by respondent No. 5 came to be allowed, which was also confirmed by the order dated 08.10.2022 passed by the Sub Divisional Officer, Pathardi, District Ahmednagar in RTS/152/2021.
3. The learned Counsel Mr. Joshi, for the petitioner submits that the Tahsildar solely relied upon the panchanama and allowed the application. He further submits that the petitioner was not granted opportunity to lead evidence and to cross-examine respondents and other witnesses. Therefore, he prays for remanding the matter for fresh

consideration.

4. In support of his contention he relied upon the order passed by this Court in the case of **Sanjay s/o Keshav Bhoite and Ors. Vs. the Collector and Ors. - Writ Petition No. 6640 of 2022**, decided on **26.09.2022** and invited my attention to paragraph Nos. 5 and 6, which read as under :

“5. In order to appreciate the matter in controversy it is necessary to bear in mind the entire scheme of the Act. The scheme contemplates that it should take the shape of a suit before a civil court, by lodging a plaint. There are elaborate provisions regarding contents of the plaint, statement on verification, examination of the plaintiff on oath, powers for rejection of the plaint, return of plaint, attendance of witnesses, passing of the orders ex parte, setting aside of the orders passed ex parte on sufficient cause being shown, withdrawal of the suit, adjournments, power to add parties, procedure to be followed in case of death of a party, points to be decided by the Mamlatdar, finality to the orders passed by the Mamlatdar and the Collectors power to call for and examine the record of the suit.

6. In spite of such elaborate provisions, both the authorities seem to have proceeded to decide the matter under the Act oblivious of the procedure to be followed. Except undertaking a Panchanama the Mamlatdar does not seem to have called upon the parties to lead evidence by framing issues and has readily drawn some inference on the basis of the Panchanama. No evidence was permitted to be led which could have enabled him to reach some objective conclusion. Instead of resorting to such a procedure, by drawing some subjective conclusion simply on the basis of the Panchanama, the Mamlatdar had dismissed the Suit.”

5. Per Contra, learned Counsel for respondent No. 5, Mr. Narwade and AGP for State support the order passed by the Tahsildar and the Sub Divisional Officer.

6. I have gone through the orders passed by the Tahsildar and Sub Divisional Officer. It reveals that the Tahsildar has passed the order on the basis of panchanama. Pursuant to the application filed by the respondent No. 5, notice was issued to the petitioner, in pursuance of which he remained present at the time of recording of panchanama. The revenue authority prepared the panchanama in his presence and pointed out that the customary road was in existence and obstruction was caused to it at the hands of petitioner. Based on the findings recorded in the panchanama, Tahsildar has rightly passed the order which was also confirmed by the Sub Divisional Officer. Therefore, I am not inclined to set aside the order passed by Tahsildar on the ground raised by the petitioner that the order was passed solely relying upon the panchanama.

7. Another issue which is to be considered here is about granting opportunity to the petitioner to lead the evidence and cross-examine the respondents and other witnesses. The authority under the Act is required to consider whether the customary road is in existence or not and whether obstruction is caused to it. If obstruction is caused, authority has to clear the road so as to be used by the agriculturists. The petitioner has to file an application before Tahsildar seeking permission to lead evidence and cross-examine respondent and other witnesses. But, no such attempt is made by the petitioner and no document in that regard is filed on record. Therefore, I am not inclined to interfere with the order dated 01.06.2021 by the Tahsildar/Mamlatdar, Shevgaon in Rasta

Case No. 07 of 2021 and order dated 08.10.2022 passed by the Sub Divisional Officer, Pathardi, District Ahmednagar in RTS/152/2021 under Article 227 of the Constitution of India.

8. In view thereof, the Writ Petition is dismissed. No order as to cost.

(SIDDHESHWAR S. THOMBRE, J.)

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