



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

WRIT PETITION NO.6318 OF 2018

1. Dnyandeo s/o Radhakisan Zirpe,
Age: 50 years, Occ : Agril,
R/o - At Kolegaon, Tq. Shevgaon,
Dist Ahmednagar
2. Sopan s/o Radhakisan Zirpe,
Age: 48 years, Occ : Agril,
R/o - At Kolegaon, Tq. Shevgaon,
Dist Ahmednagar
3. Adinath s/o Radhakisan Zirpe,
Age: 40 years, Occ : Agril,
R/o - At Kolegaon, Tq. Shevgaon,
Dist Ahmednagar

...Petitioners

Versus

1. The State of Maharashtra,
Through its Secretary
Department of Revenue
Mantralay Mumbai,
2. The Collector,
Ahmednagar
3. The Sub Divisional Officer,
Sub Division, Pathardi,
Tq. Pathardi, Dist. Ahmednagar.
4. The Tahsildar,
Tahsil Office, Shevgaon,
Tq. Shevgaon, Dist. Ahmednagar
5. Sarjerao s/o Baburao Zirpe,
Age: Major, Occ: Agril,
6. Vitthal s/o Vishwnath Zirpe,
Age: Major, Occ: Agril,
7. Arjun s/o Chatur Zirpe,
Age: Major, Occ: Agril,

8. Radhakisan S/o Sitaram Zirpe,
Age: Major, Occ: Agril,
9. Haribhau S/o Vishwnath Zirpe,
Age: Major, Occ: Agril,
10. Ashok s/o Murlidhar Wagh,
Age: Major, Occ: Agril,
11. Ramkisan S/o Aaba Wagh,
Age: Major, Occ: Agril,
12. Baban s/o Aaba Wagh,
Age: Major, Occ: Agril,
13. Chandrakant S/o Arshu Zirpe,
Age: Major, Occ: Agril,
14. Indubai Prabhakar Zirpe,
Age: Major, Occ: Agril,
15. Naryan S/o Haribhau Zirpe,
Age: Major, Occ: Agril,
16. Arjun s/o Chatru Zirpe,
Age: Major, Occ: Agril,
17. Rajkumar S/o. Asaram Zirpe,
Age: Major, Occ: Agril,
All R/o – At Kolegaon, Tq. Shevgaon,
Dist Ahmednagar

...Respondents

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Mr. Yuvraj Kakde, Advocate h/f Mr. D. B. Chavan, Advocate for
Petitioner

Mrs. A.S. Mantri, AGP for Respondents/State

Mr. Nikhil S. Jaju, Advocate for Respondent Nos.5 to 7, 9 & 16

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CORAM : MANJUSHA DESHPANDE, J.

DATE : 16th JANUARY, 2025

JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard finally with
the consent of the parties.

2. Petitioners are challenging orders dated 24/05/2013 and 04/07/2016, passed by the Tahsildar, Shevgaon, in Rasta Case No.42/2012, so also the order dated 06/12/2017, passed by Sub Divisional Officer, Pathardi, in Revision Application No.145/2016, thereby confirming the order of Tahsildar, Shevgaon.

3. Petitioners are original non-applicants in Rasta Case filed by respondent Nos.5 to 17, under Section 5(2) of the Mamlatdars' Courts Act, 1906, on 23/07/2012. It was the case of respondents that they are the owners of Gut No.196/1, 196/334, 238/2, 238/4 and 196/334 at Kolegaon, Taluka Shevgaon. They are in possession of the above properties and it's approach road goes from the Bandh of land Gut Nos.196 and 237, owned by petitioners. Though the road is old one, however, there is no entry to that effect. Since applicants/respondent Nos.5 to 17 do not have any other alternate road, they use that road for bringing agricultural implements, and the bullock cart is plied on that road itself. They do not have any other alternate road. About a month prior to filing of application, the approach road was blocked by petitioners, therefore, they have filed application for not causing interference in their passage from the said road. In the application, it was prayed that petitioners be restrained from obstructing usage and passage of respondents from the said road, which is passing through Gut No.235. Respondents have filed one more application which is numbered as Rasta Case No.42/2012 before the Tahsildar,

Shevgaon. In the this application the prayer made by respondents was that, no obstruction should be caused for usage of the South-North road passing from Gut Nos.235 and 203. Petitioners have filed their say on 24/08/2012. Panchanama was conducted on 16/04/2013. In the Panchanama it was observed that there is a cart road from western side of Gut No.196/1 and 196/2. However, the said cart road when it reaches Gut No.235/3, there is a diversion at Bandh and the road has been dug at that spot, therefore, it has been closed. Based on the said panchanama Tahsildar, Shevgaon, has allowed the application of respondents vide order dated 24/05/2013, directing to open the road going through Gut No.234, 235, 203, 204, 206 and 229 for use of respondents by removing the obstructions.

4. Petitioner herein has filed Revision Application No.09/2013 before the Sub Divisional Officer, Ahmednagar. The Sub Divisional Officer, Pathardi, has been pleased to remand the matter back to Tahsildar vide it's order dated 18/07/2014, by partly allowing the Revision application. The order dated 24/05/2013 passed by Tahsildar, Shevgaon, in Rasta Case No.42/2012 has been quashed and set aside and the Tahsildar was directed to re-inquire on the issues which were referred to him in the order passed by Sub Divisional Officer and thereafter pass order on merits. While remanding the matter, Sub Divisional Officer has specifically remanded the matter to be re-inquired on the issues which are

reproduced herein below:-

- (1) Though the applicant states that the road has been ploughed, while making submissions it was submitted that the road was obstructed by constructing Bandh. Therefore, there is a conflict statement made in the application and while making submission.
- (2) The Panchanama shows that there is diversion on the Bandh and there is a *Char*. Name of person in whose presence the Panchanama has been conducted, has not been mentioned in the Panchanama. So also, it does not bear signatures of the Authority present. Therefore, it will have to be presumed that it was not recorded in presence of competent Authority. Therefore, the said Panchanama cannot be taken into consideration.
- (3) Applicants have stated that respondents therein have alternate road available and village map also shows the same. Therefore, the Tahsildar should inquire whether actually said road exists and if it is so, whether there is an alternate road available.

Sub Divisional Officer had remanded the matter with specific issues to be decided after making due inquiry by Tahsildar. After the said order of remand was passed, the Tahsildar, Shevgaon, has passed order on 04/07/2016, observing that in accordance with the order passed by Sub Divisional Officer in the Revision he has issued notice to the respective parties. Sufficient opportunity was granted to the parties to file their written submission as well as make oral submissions. Fresh panchanama was also conducted in

the presence of respective parties. In view of the same he has again passed the same order, thereby allowing the application of respondents herein and maintaining the earlier order dated 24/05/2013 passed by him. The said order was again challenged by the petitioners before Sub Divisional Officer, Pathardi, in Revision Application No.145/2016, contending that though the matter was remanded to the Tahsildar on the issues, which were framed by the Sub Divisional Officer, the Tahsildar has failed to pass a reasoned order and has merely observed that, in accordance with the directions given by Sub Divisional Officer, he has given opportunity to the parties and conducted fresh Panchanama.

5. So far as merits of the matter and also the issues which were directed to be looked into by the Tahsildar is concerned, the same have not at all been adverted to while passing the order dated 04/07/2016. In view of the objections raised by the petitioners, the revision application was heard and was decided on 06/12/2017. Sub Divisional Officer, Pathardi, has rejected the second Revision Application No.145/2016, thereby maintaining the orders passed by the Tahsildar, Shevgaon, in Rasta Case No.42/2012, dated 24/05/2013 and 04/07/2016. So far as the reasons for allowing the Revision application is concerned, Sub Divisional Officer has also failed to appreciate the grounds raised by the petitioners in Revision application.

6. Learned advocate for petitioner has contended that the

Tahsildar has failed to pass a reasoned order while deciding the Rasta Case, though the matter was remanded back to him for passing reasoned order on specific issues which were referred to him. Learned advocate Mr. Kakde has drawn my attention to the operative part as well as conclusion part of the order, wherein no reasons are recorded by the Tahsildar in support of the order passed by him. Similarly in the Revision Application No.145/2016, Sub Divisional Officer has merely confirmed the order passed by Tahsildar on 04/07/2016. He also has failed to pass reasoned order, more particularly on the background of the remand order, with the issues which were raised by the petitioners in Revision application. It was his case that while remanding the case, issues to be decided were framed by Sub Divisional Officer, Pathardi. However, the Tahsildar has failed to pass reasoned order on the issues. In the order dated 06/12/2017 the Sub Divisional Officer has merely relied upon the earlier orders and passed the impugned order, rejecting Revision application.

7. Learned advocate for respondents submits that in fact Sub Divisional Officer has rightly passed the impugned order, since there were two findings which were already recorded in favour of respondents on the basis of Panchanama and inquiry conducted by the Tahsildar, both the authorities have recorded concurrent findings in favour of the answering respondents. Hence, on this ground alone writ petition deserves to be dismissed. According to him, one more

panchanama was drawn on 17/07/2015 which is not placed on record by petitioners. In the said panchanama existence of road is recorded. Learned advocate for respondents has taken me through the panchanama dated 17/07/2015, which is annexed with the reply affidavit. According to him, only obstruction which is made by present petitioners is on the road abutting to Gut No.203. There is in fact an existing road which goes from south to north and passes through Gut Nos.196/3, 234/3 and 206. In Gut No.203 it is observed that there is a well which is dug and the stones which are removed while digging the well are scattered on the said Bandh which is creating obstruction. It is further observed that when the Bandh from Gut Nos.243/3 to 196/3 is inspected, it appears that there is a road which is existing. Similarly as per the claim of respondents there is an alternate road available from eastern side of Gut No.196/1, on inspection it is seen that from the Bandh of Gut No.196/1 to Gut No.229 there exists a small pathway.

8. Though the respondents have relied on the panchanama, however, the fact remains that the order passed by Tahsildar after remanding the matter by Sub Division Officer, is not a reasoned order. So also, the order passed in Revision in which order of Tahsildar has been assailed, is also not a reasoned order.

9. The petitioners have relied on the judgment passed by this Court in ***Karbhari Raibhan Thete and Others vs. Additional Collector, Aurangabad and Others, 2022***

DGLS(Bom.) 1682, wherein following observations are made,

“The authority has to undertake inquiry into the alleged obstruction under Section 5(2) of the Mamlatdars’ Courts Act, as if it is a suit. The subsequent provision of the Act also explicitly demonstrate that the inquiry to be undertaken by a Mamlatdar has all the drappings of a suit, which are clearly analogous to the powers conferred upon a civil court under the Code of Civil Procedure. It is, therefore, expected of a Mamlatdar to try and decide a suit filed before him under the Act, as if it is a civil suit and exercise the various powers conferred upon him like a civil court”.

10. Similar view has been taken in case of **Tarabai Ravsaheb Chaudhari and Others Vs. State of Maharashtra and Others, 2022 DGLS(Bom.) 1807**.

11. Therefore, according to learned advocate for petitioners Tahsildar while deciding both the applications, have not followed the procedure as contemplated under Mamlatdars’ Courts Act and has merely relied on the panchanama. Even one of the Panchanama dated 16/04/2013 was found to be not in consonance with the procedure since it did not bear the signature of the competent authority conducting it. Considering the conflicting panchanamas placed on record by the parties and also the observations made regarding the panchanama made by Sub Divisional Officer while remanding the application, it would be appropriate to quash and set aside the impugned order and remand the matter back to Tahsildar.

12. Orders dated 24/05/2013 and 04/07/2016, passed by the Tahsildar, Shevgaon, in Rasta Case No.42/2012, so also the order dated 06/12/2017, passed by Sub Divisional Officer, Pathardi, in Revision Application No.145/2016, are quashed and set aside. The matter is remanded back to the Tahsildar, Shevgaon, to be decided as per the directions issued by Sub Divisional Officer, Pathardi, vide order dated 18/07/2014 in Revision Application No.258/2013, by adhering procedure as prescribed in law by affording opportunity to respective parties in respect of their claim. However, it is made clear that the exercise of deciding the application should be completed by the Tahsildar, Shevgaon, preferably within a period of four months from the date of remand. All contentions of the parties are kept open. Rule is made absolute accordingly. Writ petition disposed of.

(MANJUSHA DESHPANDE, J.)