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

43 WRIT PETITION NO. 2795 OF 2025

BANOBI QAYYUM PATHAN AND ANOTHER
.....Petitioners

VERSUS

**THE STATE OF MAHARASHTRA THROUGH COLLECTOR AND
OTHERS**
.....Respondents

Mr. A. B. Jagtap, Advocate for the petitioners
Mr. P. P. Dawalkar, AGP for the respondents/State
Mr. U. U. Wagh, Advocate for the respondent No.6

CORAM : KISHORE C. SANT, J.

DATE : 05th MARCH, 2025

P. C.

1. Heard the parties at length.
2. It is the case of the petitioners- original opponent before the Tahasildar under Section 5 of the Mamlatdar Courts Act that panchanama was drawn without issuing proper notice to the petitioners.
3. It is pointed out that the learned Mamlatdar had

given notice to the parties on 15-12-2020 for drawing of the panchanama. However, the panchanama was drawn on 16-12-2020 i.e. on next day. There is inherited trancula procedure adopted by the learned Tahasildar.

4. On the basis of such panchanama, learned Mamlatdar decided the application against the petitioners. The revisional authority dismissed the revision filed by the petitioners and thus the petitioners are before this court.

5. The learned advocate for the petitioners submits that without informing the petitioners, the panchanama was drawn. The application was not in proper format. No procedure as prescribed under Section 7 to 11 is followed by the learned Mamlatdar. He thus, prays for quashing and setting aside the impugned order.

6. Mr. Wagh, learned advocate opposed the petition. He submits that in fact respondent No.1 i.e. present petitioner No.1

was present when the panchanama was drawn. Now the petitioner cannot make grievance that panchanama was drawn behind their back. In the panchanama it is clearly recorded that opponent No.2 therein was absent and opponent No.1 was present. There is nothing to doubt the panchanama as it was drawn in presence of the panch-witness. He points out section 19(2) and the proviso and submits that what is required is only to draw a panchanama in presence of the persons. The petitioners are present. He submits that both the authorities have rightly held all the aspects involved in the matter and have rightly passed the order. No interference is called for.

7. During the course of hearing, the learned advocate Mr. Jagtap produced on record the copy of the order dated 15-09-2022 passed in WP/10993/2021. In the said case also notice was given to the parties to remain present on the particular date for panchanama. Panchanama was however drawn on the next date given in the notice. In that view of the matter this court had remanded the matter back to the Tahasildar for deciding afresh

by drawing the panchanama.

8. This court finds that here also a case is made out to remand the matter back to the Tahasildar only for the purpose of drawing panchanama and to decide the matter on the basis of said panchanama. No other points be agitated by the parties. Hence, the following order:

ORDER

- a] Writ petition stands partly allowed.
- b] The impugned judgment and order dated 24-12-2024 passed in Revision No. 182/2022 thereby confirming the order dated 17-06-2021 in Rasta case No. 3/2018 is quashed and set aside and remand back the said matter to the Tahasildar, Pathardi.
- c] The Tahasildar, Pathardi to give proper notice to the parties.

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d] The parties to appear before the Tahasildar, Pathardi on 25-03-2025.

e] No separate notice is required by the Tahasildar.

f] The Tahasildar to decide the date of panchanama and on the said date fresh panchanama be drawn.

g] Entire exercise shall be done within six weeks from today.

[KISHORE C. SANT, J.]

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