



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

945 WRIT PETITION NO. 10026 OF 2017

VITTHAL GOPALRAO MUNDE

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for the Petitioner : Mr. D.J. Choudhary

AGP for Respondents 1 to 4 : Mr. P.D. Patil

Advocate for Respondent 5 : Ms. Madhu More h/f. Mr. S.T. Veer

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CORAM : ARUN R. PEDNEKER, J.

Dated : September 03, 2025

PER COURT :-

1. Heard.
2. The application is filed by the present petitioner before the Tahsildar/ Mamlatdar under section 5 of the Mamlatdars' Courts Act stating therein that there is common pathway between the fields of the petitioner and the respondent No. 5 going from Pradhansangwi to Bandi village. It is the case of the petitioner that there is passage between the aforesaid lands and the petitioner had been accessing through road/passage for long period of time. It is the case of the petitioner that respondent No. 5 obstructed the said road going from Pradhansangwi to Bandi village. On such application being filed, panchanama was conducted and accordingly the order under section 5 of the Mamlatdars' Courts Act was passed, directing the respondent No. 5 to open the road and to remove the obstruction.
3. The said proceedings were challenged in appeal under the Maharashtra Land Revenue Code before Sub Divisional Officer in which Sub Divisional Officer has observed that under the provisions of Maharashtra Land Revenue Code, the appeal is not maintainable and that

only revision petition under Mamlatdars' Courts Act would be maintainable. The order of S.D.O. was taken further in appeal before the Additional Collector wherein he has remanded the matter back for reconsideration to the Tahsildar.

4. After remand, another panchanama was conducted on 31.1.2016 and statements of some persons were recorded by the Tahsildar/Mamlatdar under the Mamlatdars' Courts Act and thereafter, the Tahsildar passed order on 28.10.2016 holding that there was road in existence from Pradhansawangi to Bandi village and the respondent shall not obstruct the road and directions were issued to respondent No. 5 to open the road and to remove the obstruction. The said order of Tahsildar was challenged before the Additional Collector/revisional authority. The revisional authority by the impugned order has observed at para No. 3 that there is some doubt as regards existence of the road and there are multiple maps of the place available and the maps would not indicate the existence of road. The revisional authority has further observed that it is not certain whether only one road is left to reach the field of the petitioner. Thereafter, the revisional authority has directed that from common embankment between the land of the petitioner and respondent No. 5, new road can be made reach the field of the petitioner and as such, grievance of the petitioner would be redressed in the matter.

5. Mr. D.J. Choudhary, learned counsel for the petitioner submits that material on record particularly the panchanama and statements of the persons recorded while conducting panchanama by the Tahsildar would indicate the existence of road and that there is obstruction created by respondent No. 5. The learned counsel submits that although there is

overwhelming evidence to show the existence of road, the revisional authority has wrongly held that there is no road in existence and further in exercise of the powers conferred under MLRC directed to open the road. The learned counsel particularly relies upon para 6 of the judgment of this court passed in **Writ Petition No. 13351/2022 dated 4.7.2024 in the case of Prabhakar s/o. Bankatrao Mokase (Jahagirdar) and Anr. Vs. The State of Maharashtra**. The said para is as under :-

"6. Although, entire proceeding was moved under the Act of 1906, the learned Tahsildar appears to have passed an order invoking provisions under Section 143 of the MLRC, 1966 and granted new cart road in favour of respondent no.5. Apparently, the learned Tahsildar has wrongly exercised jurisdiction under Section 143 of the MLRC, 1966, when proceeding before him was instituted under the Act of 1906. The provisions under Section 143 of the MLRC, 1966 operate in independent sphere and takes care of a different situation than as contemplated under Section 5 of the Act of 1906. In the present case, respondent no.5 specifically pleaded existence of customary way and alleged obstructions at the hands of the petitioners. In that view of the matter, there was no reason for Tahsildar to invoke his jurisdiction under Section 143 of the MLRC, 1966 and grant new cart road in favour of respondent no.5. Unfortunately, the challenge to this order was not entertained in Revision."

6. The learned counsel for the petitioner submits that assessment of the evidence by the revisional authority is perverse and accordingly, he prays for setting aside the impugned order passed by the revisional authority. In alternate, the learned counsel prays that matter be remanded back to the concerned authority on the ground that evidence on record is

not properly appreciated.

7. Per contra, Ms. Madhu More holding for Mr. S.T. Veer, learned counsel for respondent No. 5 submits that there is no evidence to indicate that there is existence of road between the field of the petitioner and respondent No. 5. The learned counsel submits that the order passed by the Mamlatdar under section 5 is erroneous and the revisional authority has rightly held that there is no road in existence. The learned counsel submits that the proceedings were initiated by the petitioner under section 143 of MLRC and not under section 5 of Mamlatdars' Courts Act and the proceedings are converted into appeal. The learned counsel submits that reasonable order is passed by the revisional authority and has exercised the equitable jurisdiction vested in it and prays for dismissal of the writ petition.

8. Having considered the rival submissions, it is to be seen that there is material available in respect of enquiry conducted. Spot inspection has been conducted and panchanama has been drawn. Statements of various persons have been recorded and finding is given by the Mamlatdar that there is existence of road. However, while reversing the findings the revisional authority ought to have discussed the evidence on record. However, the revisional authority has not discussed the evidence on record and held that there is no map indicating existence of road and has discarded the evidence on merits. Further, the revisional authority has exercised powers under MLRC to give direction to open the road from the boundary of the fields of petitioner and the respondent and the same creates prejudice to the petitioner. The learned counsel for the petitioner has pointed out that there is evidence indicating that the road was in

existence and that the evidence ought to have been discussed by the revisional authority while holding that there is road or there is no road. Considering this aspect of the matter and considering that the **Additional Collector** has exercised the powers under MLRC, I deem it appropriate to quash and set aside the impugned order and to remand the matter back to the revisional authority for reconsideration.

9. With the above observations, the impugned order passed by the learned Additional Collector is quashed and set aside and the matter is remanded back to the **Additional Collector** to decide the revision afresh in accordance with law within a period of three months from the date of receipt of this order. The parties to appear before **Additional Collector** on 15.9.2025 so as to enable to **Additional Collector** to give further date in the matter.

10. The writ petition is disposed of accordingly.

(ARUN R. PEDNEKER, J.)

ssc/