



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11771 OF 2024 WITH
CIVIL APPLICATION NO. 13044 OF 2024
IN WP/11771/2024

Laxman Daulat Patil Died His Lrs
Anil Laxman Patil And Others

VERSUS

Indubai Abhiman Patil And Others

- Mr. S. T. Mahajan, Advocate for the Petitioner
- Mr. S. P. Shah, Advocate for the Respondent Nos. 1 to 3 & 6 to 9
- Mr. H. P. Patil, Advocate for Respondent Nos. 4 and 5
- Mr. N. D. Raje, AGP for Respondents/State

CORAM : R. M. JOSHI, J

DATE : APRIL 02, 2025

PER COURT :

1. This Petition takes exception to the orders dated 06.11.2023 passed by Tahsildar and order passed by the Assistant Collector in Revision Application No. 86/2023 dated 15.05.2024 whereby the order of dismissal of Vahivat Case No. 11/2017 came to be confirmed.

2. The facts which led to the filing of this Petition can be narrated in brief as under:

Petitioners are the owners of 23/2/B, 23/2/A, 24/1 and 24/2 of village Nashinda, Tq and Dist. Nandurbar. It is the case of the Petitioners that the

contesting Respondents i.e., owners of Gut Nos. 2A and 21/2 are causing obstruction to the customary way of the Petitioners to approach their agricultural land. In the initial round of litigation, Tahsildar allowed the said application. This order passed by Tahsildar came to be challenged unsuccessfully in the Revision Application No. 44/2022. The contesting Respondents being aggrieved by the said order preferred Writ Petition No. 8163/2022, which was allowed setting aside orders passed by Tahsildar and Assistant Collector and relegation of proceedings to the Tahsildar for decision afresh. At the time of rehearing of the application, Tahsildar conducted spot panchnama of 19.07.2022 and on the basis of the said spot verification and also considering the other material evidence on record passed order dated 06.11.2023 whereby the application i.e., Vahivaat Case No. 11/2017 was dismissed. This order came to be challenged before Assistant Collector under Section 23(2) of the Mamlatdar's Courts Act, 1906 (for short '**the Act**') being RTS Revision No. 86/2023. Assistant Collector conducted re spot verification. A fresh spot panchnama was drawn by the Revisional Authority on 15.03.2024. Revisional Authority

thereafter proceeded to her both sides and passed impugned order. Hence, this Petition.

3. Learned Counsel for Petitioners submit that in the first round of litigation Tahsildar has recorded findings with regard to the existence of customary way and obstruction caused thereto by the contesting Respondents. It is his submission that on technical ground the said order which was even confirmed by the Assistant Collector came to be set aside. It is his submission that on remand, panchnama drawn by Tahsildar does not indicate the position of spot but it only refers to the alleged statement made to him. It is his submission that the order passed by the Tahsildar dated 06.11.2023, therefore, is not sustainable. As far as the order passed by the Assistant Collector is concerned, it is contended that the Assistant Collector has exceeded the jurisdiction and as such, this order also deserves interference. He relied upon judgment of this Court in case of Sudhir Yashwant Dhangade vs. Ankush Kashiram Bole and Others, 2019 (2) Bom.C.R. 145.

4. Learned Counsel for contesting Respondents vehemently opposed the Petition by drawing attention of

the Court to the conduct of the Petitioners. It is his submission by referring to the affidavits filed before this Court that though initially order came to be passed in the year 2018, execution thereof was not sought for a long period of 6 years. It is his submission that it is only after the execution proceedings were initiated, the contesting Respondents had occasions to file Writ Petition before this Court. It is his submission that having regard to the time lapsed in between, the Revisional Authority was fully justified in verifying the spot personally before passing any order. It is his submission that in any case the order impugned has not been passed only on the basis of spot panchnama conducted by him on 15.03.2024 but the Authority has also taken into consideration the affidavit filed by Tukaram Patil i.e., vendor of contesting Respondents. It is his submission that having regard to the nature of enquiry contemplated by the provision of Section 5 of the Act and the powers of the Revisional Authority, no interference is required in the order impugned.

5. In order to appreciate the aforesaid

submissions, it would be relevant to take note of provision of Section 23 of the Act, which reads thus:

23. Bar of appeal.—

(1) There shall be no appeal from any order passed by a Mamlatdar under this Act.

(2) Collector's power to revise Mamlatdar's proceedings.— *But the Collector may call for and examine the record of any suit under this Act, and if he considers that any proceeding, finding or order in such suit is illegal or improper, may, after due notice to the parties, pass such order thereon, not inconsistent with this Act, as he thinks fit.*

(2A) Delegation to Collector's powers.— *The Collector may delegate the powers conferred on him by this section to any Assistant Collector, Deputy Collector or Assistant Commissioner subordinate to him;*

(3) Collector deemed to be a Court.— *Where the Collector, Assistant Collector, Deputy Collector or Assistant Commissioner takes any proceedings under this Act he shall be deemed to be a Court under this Act.*

This provision clearly bars an Appeal against the order passed by Mamlatdar under this Act. The Collector has power of Revision. Even otherwise and more so, when an Appeal is specifically barred, Collector while entertaining revision cannot assume and exercise any powers analogous to the Appellate

Court/Authority. Having regard to the powers of the Collector in setting aside the order of Mamlatdar, it was only open for the Collector to consider the order impugned before him and to ascertain legality or otherwise from material available on record. Unlike power of Appellate Court, it was not open for Revisional Authority to collect fresh evidence and to record independent finding thereon for first time.

6. If such procedure is allowed to be adopted, it will amount to a denying an opportunity of challenging the findings of fact by Tahsildar before the Revisional Authority. The intention of legislature is absolutely clear from provision of Section 23 of the Act to say that the Collector cannot exercise the powers as Appellate Court/Authority. Hence, it was not open for the Collector to record any fresh panchnama and as such, no findings on the basis of it could have been recorded for the first time.

7. Perusal of the impugned order shows that in paragraph 4 the said panchnama was taken into consideration. This Court does not find any other reason to accept for one reason about the affidavit

filed by vendor of the contesting Respondents to be a ground for dismissing the Revision Application.

8. The proper course which was available for the Assistant Collector if it was found that the spot panchnama was not properly done, the Collector ought to have set aside the order impugned before him and call upon the Tahsildar to record fresh panchnama and decide proceedings as per law. The Collector was not justified in inspecting the spot himself only on the ground that dispute between the parties is in existence for a long period.

9. Having regard to the aforestated facts and as the Collector has clearly exceeded his jurisdiction and powers of revision, the order impugned passed by Assistant Collector dated 15.05.2024 cannot sustain. As a result of which, impugned order is set aside. The proceedings bearing Vahivaat Case No. 11/2017 is relegated back to the Tahsildar for decision afresh.

10. It is clarified that Tahsildar should permit the parties who desire to cross-examine persons who have filed affidavit on behalf of either parties. It is

further clarified that if the parties fail to seek cross-examination of affiants or do not exercise the powers, it shall be presumed that they are not interested in cross-examination. In such event, it would not open for the parties to take make any grievance in that regard.

11. Since the dispute is pending from 2017, Tahsildar is directed to deice the same within a period of three months in accordance with law. Parties to appear before the Tahsildar on 23.04.2025. Tahsildar not to issue any fresh notices to parties to this Petition for their appearance.

12. Petition stands disposed of in above terms. Pending civil application stands disposed of.

(R. M. JOSHI, J.)