



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 12090 OF 2024

Mohammad Allabaksh Shaikh And Others ... Petitioners

Versus

Sub Divisional Officer Ahmadpur And Others ... Respondent

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- Mr. Natu Sharad V, Advocate for the Petitioners
- Mr. V. M. Chate, AGP for Respondent no. 1
- Mr. S. S. Chillarge, Advocate for Respondent nos. 2 to 7

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CORAM : ROHIT W. JOSHI, J.
DATE : 10th JUNE, 2025

ORDER :

1. The petitioners are aggrieved by order dated 08.07.2024 passed by the Sub-Divisional Officer, Ahmedpur, Dist. Latur in revision application no. 2023/ROR/A-182. The said order is passed under section 5(2) of the Mamlatdar's Courts Act, 1906. Respondent nos. 2 to 7 in the present petition had filed an application under section 5 of the Mamlatdar's Courts Act, *inter alia* claiming that suit road was blocked by the petitioners and respondent no. 8. They claimed right of east-west road through *Bandh* of land bearing survey nos. 255 and 256. The said application came to be rejected by the Mamlatdar's Courts Act / Talsildar, Chakur vide order dated 31.10.2023. Aggrieved by rejection of the application, respondent nos. 2 to 7 filed the aforesaid revision before

respondent no. 1 - Sub-Divisional Officer. Respondent no. 1 - Sub-Divisional Officer had allowed the revision application vide order dated 08.07.2024 *inter alia* remanding the matter to the Mamlatdar for deciding the matter afresh. The learned revisional authority has observed that the spot inspection of the road was not conducted before passing the order dated 31.10.2023 rejecting the application filed by respondent nos. 2 to 7.

2. Mr. Nattu, the learned counsel for the petitioners has contended that earlier there was a dispute with respect to right of way *inter se* between owners of gat no. 500 on one side and between owners of gat nos. 498 & 499 on the other side. He states that the said dispute was amicably resolved in an earlier civil suit. The petitioners are owners of gat no. 498 and the brother of petitioners is owner of gat no. 499. He contends that learned Mamlatdar has rightly rejected the application in view of compromise decree passed in the earlier civil suit which indicates that respondent nos. 2 to 7 had an alternate road for their respective brothers. Shri Nattu, further contends that the learned revisional authority has not dealt with findings recorded by the learned Mamlatdar while rejecting the application.

3. Per contra, Mr. S. S. Chitambar, learned advocate for respondent nos. 2 to 7 justifies the order of remand stating that the

application could not have been decided without conducting spot panchnama and therefore, the matter is rightly remanded for consideration afresh after conducting spot panchnama.

4. Perusal of order passed by the learned Mamlatdar will demonstrate that spot panchnama was conducted before passing the order. The finding by the learned revisional authority that spot panchnama was not conducted, therefore, does not appear to be correct.

5. However, perusal of the order passed by the Mamlatdar will demonstrate that the learned Mamlatdar has rejected the application merely relying upon compromise decree in Regular Civil Suit no. 681 of 2002 wherein 8 feet road was granted along side the *bandh* in between lands bearing gat nos. 499 and 500. The learned Mamlatdar has not recorded any finding as regards existence or otherwise of the road claimed by respondent nos. 2 to 7 - original applicants. Likewise, he has also not recorded any finding as to whether the alleged road was blocked within a period of six months from the date of filing of the application. Assuming that there is an alternate way available, that by itself cannot be a ground for blocking another approach road. In the considered opinion of this Court, the application could be rejected only if the applicants fail to prove existence and use of the road claimed or that the road claimed was blocked for a period of more than six months prior to the date of

filing of the application. The learned Mamlatdar has not recorded any finding in this regard.

6. In view of the above, although the learned revisional authority has failed in considering the controversy in a correct perspective while remanding the matter, the order of remand does not warrant interference. In that view of the matter, I find no reason for exercising writ jurisdiction or supervisory jurisdiction under Articles 226 and 227 of the Constitution of India to interfere with the remand order.

7. Mr. Natu also points out that after the order of remand, which was passed by learned respondent no. 1, a spot panchnama was conducted on 17.12.2024, despite order dated 11.11.2024, passed by this Court granting stay to the order dated 08.07.2024 passed by the learned Sub-Divisional Officer. He states that the panchnama dated 17.12.2024 is carried out in his absence. The learned counsel for respondent nos. 2 to 7 also does not dispute this position. Respondent no. 1 has filed reply in the matter on 05.03.2025, stating that the spot panchnama was conducted inadvertently being unaware of the *interim* order passed by this Court. In that view of the matter, the spot panchnama dated 17.12.2024 will not be relied upon while deciding the matter.

8. Mr. Natu, learned advocate for the petitioners has drawn attention to clause 4 of the operative order passed by the learned revisional authority. Learned revisional authority has directed that alternate road be provided to respondent nos. 2 to 7 as a stopgap arrangement to enable them to cultivate their respective lands. Perusal of clause 4, as rightly pointed out by Mr. Natu is absolutely vague. It does not provide any particulars or details as regards the road to be allotted to respondent nos. 2 to 7 for approaching their respective agricultural lands. The learned advocate for respondent nos. 2 to 7 fairly concedes that alternate road is not allotted in terms of clause 4 of the operative order. In that view of the matter, clause 4 of the operative order dated 08.07.2024 passed by respondent no. 1 / Sub-Divisional Officer is quashed.

9. The petition is thus partly allowed by quashing clause 4 of the operative order dated 08.07.2024 passed by respondent no. 1 / Sub-Divisional Officer and maintaining the order of remand.

10. It is however, clarified that all contentions raised by respective parties are kept open. The matter shall be decided by the learned Mamlatdar on its own merits without being influenced by the observations made by the learned revisional authority.

11. Parties to appear before the learned Mamlatdar on 30.06.2025 at 11:00 a.m. Fresh notice will not be issued for appearance.

12. The learned Mamlatdar is directed to decide the matter finally after following prescribed procedure before 31.12.2025.

[ROHIT W. JOSHI]
JUDGE