IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 13311 OF 2024

Parmeshwar Sahebrao Mande
VERSUS
Uddhav Achyutrao Mande And Others
...
Mr. G. S. Shete, Advocate for the Petitioner
Mr. S. P. Sonpawale, AGP for Respondent-State
Mr. M. B. Kolpe h/f Mr. V. B. Deshmukh, Advocate for Respondent nos.1 and 2

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CORAM : AJIT B. KADETHANKAR, J.

DATED : 15TH OCTOBER, 2026

P.C. :-

. Feeling aggrieved by the decision and order dated 20.02.2024 passed by the Naib Tahsildar Revenue-1, Manwat @ Mamlatdar in a proceeding under Section 5(2) of the Mamlatdar's Courts Act, 1906, as also decision and order dated 06.09.2024 passed by the Sub Divisional Officer, Pathri in proceeding under Section 23(2) of the Act of 1906, the petitioner is before this Court.

2. Suffice to note, the litigation is among the co-owners of gut no.348 of village Manoli as regards to the right of the respondents to have path way through gut no.348 and 347 to approach their another land situated in gut no.343. The parties had been twice before the first authority and the

revision authority under the provisions of 1906 Act. Initially, an application under Section 5(2) was filed by the respondents against the present petitioner contending that their regular usage way through gut no.348 and 347 was blocked by the petitioner and hence, the same be restored. The Naib Tahsildar conducted the panchnama and the application came to be allowed.

3. Feeling aggrieved thereby, the petitioner had been before the Sub Divisional Officer i.e. the Revisional Authority under Section 23 of the Act of 1906. The Revisional Authority heard the parties and remitted the matter back to the First Authority for re-conducting the panchnama and reassessing the case on its own merits. It was in view of the deficiencies pointed out before the Revisional Authority in the earlier panchnama as also the finding of First Authority.

4. In the second round, the panchnama was conducted, statements were recorded and the Authority again passed order against the petitioner. Upon reconsideration of the matter, the First Authority again passed an order against the petitioner vide order dated 20.02.2024. The petitioner carried the order in Revision before the Sub Divisional Officer under Section 23 of the Act of 1906. Vide its decision and order

dated 06.09.2024, the Revisional Authority concurred with the findings rendered by the First Authority. Feeling aggrieved thereby, the petitioner is before this Court.

5. Mr. G. S. Shete, learned Advocate for the petitioner submits that the Naib Tahsildar despite directing to the parties and recording that she herself would remain present while preparing the panchnama, she did not remain present while the panchnama was conducted. His second submission is that although there is an alternate way available to the respondents to approach gut no.343, instead of taking recourse to that, respondents unnecessarily insisted to have usage way as claimed through gut no.348 and 347. Thus he submits that these two aspects were not considered by the Authorities. Therefore, the Writ Petition deserves to be allowed.

6. Mr. M. B. Kolpe h/f Mr. V. B. Deshmukh, learned Advocate for respondent nos.1 and 2 would advocate the findings recorded by the First Authority and also the Revisional Authority. He submits that the parties are co-owners of gut no.348. He submits that it is not the case of the respondents that they are claiming any usage way through the land gut no.348 owned by the petitioner. It is his

contention that the usage way was in existence through Number Strip (नंबर धुरा) existing between gut nos.348 and 347 which the petitioner have forcibly stalled. He would submit that the First Authority has categorically recorded the findings that such usage way was in existence and was closed by the petitioner. Mr. Kolpe then invites my attention to the statement recorded in the panchnama whereby the petitioner stated that the he shall not allow the respondents to approach through Number Strip (नंबर धुरा) of gut nos.348 and 347. Mr. Kolpe, learned Advocate thus prays to dismiss the Writ Petition.

7. Mr. S. P. Sonpawale, learned AGP invites my attention to the reply affidavit filed by the concerned Naib Tahsildar. Anxiety of learned AGP is to justify that although it inadvertently remained to be signed by the Naib Tahsildar on the panchnama, the photographs attached with the reply affidavit duly forming part of the record would clearly show that the concerned authority was very well present while the panchnama was conducted. With this, he too supports the findings recorded by both the authorities.

8. I have heard all the parties extensively. So far as the objection as regards to the absence of signature of the Naib Tahsildar is concerned, the photographs annexed to the reply affidavit filed by learned AGP demonstrate that the concerned authority was very well present when the activity was conducted.

9. Furthermore, it is observed in the order dated 20.02.2024 that the Mamlatdar herself conducted the spot panchnama as per Section 5(2) of the Act and recorded the finding that a path way was existing through gut no.348 and 347. It is also recorded that there is no Dhamangaon-Manvat Road through gut no.348 as on the relevant date.

10. Suffice to note, the petitioner who contends that the respondents had alternate usage way to access gut no.343 did not produce the village map before the authorities to demonstrate that the respondents cannot insist upon using the pathway through gut nos.348 and 347.

11. In view of the above, I find that no error can be said to have been committed by both the authorities under the Act of 1906. Obviously from the rival contentions of the parties, it appears that there are number of disputed questions of facts. Suffice to note that, the petitioner is always at liberty to

approach the Civil Court to agitate his claim against the respondents. In view of this, I pass following order:

ORDER

a. Writ Petition stands dismissed.

b. The petitioner may approach the Competent Civil Court seeking relief against the respondents.

c. This Court vide order dated 09.12.2024 protected the petitioner thereby staying the impugned judgment and order thereby putting a rider on the petitioner that he will allow the respondents to use the alleged way merely as a foot way. In view of this, the said protection is extended for a further period of two months from today.

(AJIT B. KADETHANKAR, J.)

Rushikesh/2026