



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

WRIT PETITION NO.7018 OF 2024

1. Ramesh Rangnath Kedare,
Age: 58 years, Occ. Agri.,
R/o Adgaon Khurd, Post: Pimpiriraja
Tq. & Dist. Chhatrapati Sambhajinagar.
2. Sanjay Gangadhar Thombare,
Age: 33 years, Occ. Agri.,
R/o Adgaon Khurd, Post: Pimpiriraja
Tq. & Dist. Chhatrapati Sambhajinagar.

.....PETITIONERS
(Original Applicants)

VERSUS

1. The State of Maharashtra,
Through its Secretary,
Revenue and Forest department,
Mantralaya, Mumbai-32.
2. The Sub Divisional Officer,
SDO Office, Chhatrapati Sambhaji Nagar,
3. The Tahsildar,
Tahsil Office, Chhatrapati Sambhaji Nagar,
4. Rambhau Nivrutti Kedare,
Age: 60 years, Occupation: Agriculturist,
5. Tarabai Shrimant Wankhare,
Age: 30 years, Occupation: Agriculturist,
6. Laxman Durgaji Kedare,
Age: 61 years, Occupation: Agriculturist,
7. Anita Madan Kedare,
Age: 26 years, Occupation: Agriculturist,
Respondent nos.3 to 6,
R/o Aadgaon, Post: Pimpiriraja,
Tq. & Dist. Chhatrapati Sambhajinagar.

.....RESPONDENTS
(Respondent nos.4 to 7 are Org. Respondents)

Mr. Vikram L. Bhangе h/f Mr. K. D. Jadhav, Advocate for the petitioners.

Mrs. B. B. Gunjal, AGP for respondent nos.1 to 3.

Mr. U. A. Bhадgaonkar, Advocate for respondent nos.4 and 5.

CORAM AJIT B. KADETHANKAR, J.
DATED 10TH MARCH, 2026

JUDGMENT :- (Per: Ajit B. Kadethankar, J)

1. Rule. Rule made returnable forthwith.
2. Heard finally with consent of Mr. Vikram L. Bhangе h/f Mr. K. D. Jadhav, Advocate for the petitioners, Mrs. B. B. Gunjal, learned AGP and Mr. U. A. Bhадgaonkar, Advocate for respondent nos.4 and 5.
3. The controversy is regarding the proceedings and orders passed by the respondent nos.2 and 3 under the provisions of Mamlatdar's Courts Act, 1906 (hereinafter referred to as "the Act of 1906" for sake of brevity). Considering the nature of controversy in the Writ Petition, I have heard the parties for final disposal.
4. The facts in the case are not disputed by either parties. The petitioners are the owners and possessors of their respective lands situated in gut no.166 and 168 of village Adgaon Khurd, Post Pimpriraja Taluka and District Chhatrapati Sambhajnagar.

5. Respondent no.5 filed an application on 26.06.2018 before the respondent no.3 contending that she be given a Vahivat Rasta to access her land situated in gut no.166 as per Section 143 of the Maharashtra Land Revenue Code. She further submitted that the petitioner no.1 had obstructed her way, and therefore requested that by conducting a spot panchnama, a way be provided to enable her to access her field.

6. It appears that consequent to the application, the concerned Tahsildar arranged a spot panchnama. Accordingly, a panchnama was prepared on 24.12.2018. Pertinent to note that there is nothing to indicate that the notice of panchnama was given to the petitioner no.1.

7. On 04.08.2021, an application came to be filed by the respondent nos.4 to 7 that the petitioner no.1 Ramesh Kedare has sold his land to the petitioner no.2 Sanjay Thombre, who does not permit the applicants to pass through his field. As such, the respondent nos.4 to 7 filed an application seeking spot panchnama and order against the petitioners to give way to the applicants. It appears that pursuant to the application dated 04.08.2021 filed by the respondent nos.4 to 7, a spot panchnama was conducted on 24.12.2021. The petitioners contend that no notice of such

panchnama was given to the petitioners. Thereafter, hearing was conducted by the Tahsildar, Chhatrapati Sambhajnagar under Section 5 of the Act of 1906 and vide order dated 30.12.2022, applications filed by the respondent nos.4 to 7 was allowed.

8. As against the order passed by the Tahsildar under Section 5(1)(2) of the Act of 1906, the petitioners preferred a Revision Application under Section 23(2) of the Act of 1906 before the Sub Divisional Officer, Chhatrapati Sambhajnagar. Vide order dated 15.01.2024, the Sub Divisional Officer, Chhatrapati Sambhajnagar rejected the Revision Application filed by the petitioners. As such, the petitioners are before this Court.

9. I have heard the learned Counsels for the respective parties extensively. Learned Counsel for the respondents has argued the matter through video conferencing. With able assistance of the learned Counsels for the parties, I have gone through the Writ Petition paper book. It is pertinent to note that both the authorities have predominantly placed reliance on the panchnama, and has then passed the impugned order. If panchnamas dated 24.12.2018 And 24.12.2021 seen meticulously, there is not a single word of the finding or the noting which is to be recorded by the Panchas in the panchnama. What is scribed in the panchnama is merely the

contentions of the applicants i.e. respondent nos.4 to 7 respectively. What Tahsildar has done is also at par with what the panchnama says. The Tahsildar merely recorded the contentions of the parties. The panchnama is prepared by independent Panchas. The Tahsildar records that she herself has conducted the spot panchnama. The spot panchnama nowhere indicate that the Tahsildar participated the panchnama and has recorded atleast a single noting as regards to the existing condition which will suffice the purpose of adjudication of the Vahivat Case.

10. The applications filed by respondent nos.4 to 7 neither clarify nor even suggest as to when the petitioners have obstructed or prevented the respondent nos.4 to 7 from utilizing the existing way which they were operating grievously. As such, it is apparent that the Tahsildar has not even considered the provisions incorporated in Section 5 to test whether the application complies the parameters required for grant of relief under Section 5 of the Act. It appears that the Tahsildar has referred to another spot panchnama dated 10.03.2022 which is not produced before me. From the recitals of the impugned order, the said panchnama does not reveal to be a panchnama which is to be carried out pursuant to the original applications filed by the respondent nos.4 to 7(supra). It appears that

vide the said panchnama of 2022, a way of 8 feet is prepared near to the field boundary. Certainly, this panchnama cannot be a ground for allowing the applications filed by respondent nos.4 to 7. It is pertinent to note that respondent nos.4 to 7 have not produced any material before this Court to show that they specifically brought on record the date on which the petitioners have obstructed their Vahivat Rasta.

11. The respondents also did not produce anything to show as to the petitioners were made aware of the panchnama referred herein. The Mamlatdar's Courts Act, 1906 is a code in itself. The procedure for conducting the inquiries and for passing order under the provisions of the Act is descriptively provided under the Act itself. I find that the order passed by the Tahsildar on 30.12.2022 in File No.2019/जमा-२/सिआर-49 is passed without examining cases of respondent nos.4 to 7 within the parameters of the provisions of the Act of 1906. There are serious defects in the application filed by respondent nos.4 to 7, as also in the findings recorded by the Tahsildar. There is no finding as regards to since when the petitioners allegedly obstructed the way of respondent nos.4 to 7. There is nothing on record that previously a way was available to respondent nos.4 to 7 that has been subsequently obstructed by the

petitioners, for which the Tahsildar should exercise the powers under Section 5 of the Act of 1906.

12. As such, I am of the considered view that the impugned order dated 30.12.2022, passed by the Tahsildar, Chhatrapati Sambhajinagar could not be sustained. In the Revision Application, the Revisional Authority has merely echoed the findings of the Tahsildar. The Revisional Authority did not consider those aspects of the matter which has discussed above. It appears that only on the basis of findings recorded by the Tahsildar, the Revisional Authority has rejected the Revision Application. Hence, the order passed by the Revisional Authority also cannot be sustained. In view of this, I pass following order:

ORDER

- i. The Writ Petition stands allowed.
- ii. Both the impugned orders dated 30.12.2022, passed by the Tahsildar, Chhatrapati Sambhajinagar And order dated 15.01.2024, passed by the Sub Divisional Officer, Chhatrapati Sambhajinagar stand quashed and set aside.
- iii. Rule made absolute in above terms.
- iv. Writ Petition is disposed of.

(AJIT B. KADETHANKAR, J)