



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

1001 WRIT PETITION NO.10018 OF 2025

Ganesh Vijaykumar Patil And Others.

VERSUS

Sanjay Vasanttrao Kulkarni

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Advocate for Petitioners : Mr. V. G. Kodale

Advocate for Respondent : Mr. S.S. Manale

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CORAM : S. G. CHAPALGAONKAR, J.

Dated : January 06, 2026

FINAL ORDER :-

1. Petitioners impugns the order dated 25.7.2025 passed by the Sub Divisional Officer, Latur in ROR/A/92 of 2025 by which the order dated 7.3.2025 passed by the Mamlatdar/Tahsildar, Latur in Rasta Case No.429 of 2024 has been set aside and matter is remitted back for reconsideration.

2. The Respondent instituted the proceeding in case no.429 of 2024 under section 5 of the Mamlatdars Courts' Act before the Mamlatdar/Tahsildar, Latur contending that he is owner of the area to the extent of 1H 37R out of the land gat no.537. The petitioners are owner of the land gat no.597 and 538. According to the respondent, on 14.5.2024 he got fixed boundaries of his land gat no.537. It was found during the

measurement that 10 feet road out of gat no.537 has been encroached by the petitioners. The petitioners created obstruction in use of 10 feet road which is in existence and used as customary way passing from northern side of the land gat no.537. The Mamlatdar/Tahsildar caused inquiry into the matter. A panchnama dated 13.12.2024 was drawn. The Mamlatdar observed that, in fact, 10 feet road, on which respondent claims his right was private road of the petitioners. Eventually, dismissed the application.

3. Aggrieved respondent filed revision application no.92 of 2025 under section 23 (2)(C) of the Mamlatdar's Courts Act of 1906. The Sub Divisional Officer partly allowed the revision application and remanded the matter back for reconsideration to Tahsildar/Mamlatdar vide impugned order dated 25.7.2025. Hence, this writ petition.

4. Heard learned advocates appearing for the respective parties. Perused the record tendered into service before this Court.

5. The limited controversy which requires consideration in this petition is whether it was necessary to remit the matter for re-consideration to the Mamlatdar. Apparently, respondent is

claiming existence of customary way from the land gat no.597, whereas petitioners are coming with a specific case that 10 feet road is part of their land and it has been constructed for their personal use. The claim of respondent that it is a customary way is specifically denied by them. According to petitioners for limited period of three months, considering the peculiar situation, respondent was permitted to use 10 feet private way. Now he is trying to get undue benefit of the same.

6. The learned Mamlatdar after appreciation of material on record observed that respondent could not prove existence of customary way and that same is private road created by the petitioners. However, in revision, learned S.D.O. observed that contents of spot panchnama depicts use of way by respondent. With these observations, learned S.D.O. pleased to remand matter for reconsideration.

7. It is trite that, appellate or revisional authority is empowered to relegate the matter to First Authority only when it is not possible to appellate or revisional authority to dispose of the case finally without remand or if the evidence on record is insufficient to determine controversy between the parties. Even, conjoint reading of the scheme under Rule 23, 23-A and

24 of Order 41 of CPC would show that it is only in such case, where order under challenge is set aside by the appellate authority or revisional authority considering that retrial is necessary; the remand order is justified. The order of remand is not to be passed in routine manner because an unwarranted order of remand merely elongates life of the litigation without serving the cause of justice. It is not permissible to remand the matter only on the ground that points touching appreciation of the evidence were not dealt with by the original authority.

8. In the present case, it can be observed that none of the parties to the proceeding wanted to bring any additional material on record. Careful reading of the impugned order would show that the learned S.D.O. was not convinced with the reasons recorded by the learned Tahsildar. In such contingencies, it was always open for revisional authority/ S.D.O. to record his own reasons and decide lis finally without relegating matter back for retrial.

9. In light of the aforesaid observations, this Court finds that the impugned order relegating parties to the Mamlatdar's Court cannot be sustained in law. In the result, following order is passed.

O R D E R

- i. Writ Petition is partly allowed in terms of prayer clause “C”.
- ii. The proceeding in ROR/A/92/2025 is relegated back to the Sub Divisional Officer, Latur for re-consideration on merits on the basis of the pleadings, evidence tendered by the parties in support of their contentions.
- iii. Parties to appear before the Sub Divisional Officer, Latur on **29.1.2026**.
- iv. The learned Sub Divisional Officer, Latur to decide the revision application on its own merits without influenced by the observations made herein above within a period of three **(3)** months from the date of appearance of the parties.
- v. Until final decision in the revision application by the Sub Divisional Officer, Latur parties to maintain **status-quo** as on today in respect of the suit way.
- vi. Writ Petition stands **disposed off**.

(S. G. CHAPALGAONKAR, J.)