

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7521 OF 2024

Shankar Chindhu Gayke & Ors

...Petitioners

Versus

Sukdeo Barku Gayke & Ors

...Respondents

Mr. Rameshwar Gite, for the Petitioners.

Mr. Narayan G. Rokade, a/w Mrunmai Rokade, Swapnil S. Kalokhe, Ramchandra Wagh, AJ Shaikh Aazad, Ankita Ugalmugale, for Respondent Nos.1 to 9 & 11.

Mr. Siddharth Ghodake, for Respondent No.10.

Mr. Bapusaheb Dahiphale, AGP for Respondent Nos.13, 14 & 15.

CORAM : SOMASEKHAR SUNDARESAN, J.

DATE : April 7, 2026

ORDER :

1. Rule. Rule made returnable forthwith and by consent of the parties, heard finally.

2. This Petition impugns an order dated April 17, 2024 ("**Impugned Order**") passed by the Revisional Authority under Section 23 of the Mamlatdars' Courts Act, 1906, ("**Mamlatdars' Courts Act**") which essentially, reverses an order dated June 28, 2023 passed by the Mamlatdar, which had concluded that an east-west pathway on Gat No. 214/1/1/1/2/1 ("**Subject Plot**") which connects to Gat No. 215/1

belonging to the Petitioner (“*Petitioner’s Parcel*”) had been obstructed and was directed to be cleared.

3. The record indicates that there is an explicit Mutation Entry documenting that there is such a path and such right has been recognized under the Record of Rights. The Mamlatdar has also conducted a spot inspection and the Panchnama (annexed at page 28) dated November 14, 2022 indicating the existence of such a path. The order of the Mamlatdar is a detailed and reasoned order which relies upon and is supported by the Mutation Entry as well as the Panchnama on the Subject Plot showing the path. Such a depiction is also seen in the Panchnama dated November 14, 2022.

4. A Panchnama dated February 20, 2023 does not show this path at all and instead shows a path in Gat No.214/2/B which has no connection whatsoever to Gat No.215 and thereby to the Petitioner's Parcel. This Panchnama is dated February 20, 2023 but the fact that the path shown in the same has no relevance to Gat No. 215 is noteworthy.

5. Against this backdrop, when one examines the Petition filed before the Mamlatdar, the said Petition explicitly tables the path said to be on the Subject Parcel connecting to the Petitioner's Parcel. This has been squarely dealt with by the Mamlatdar. However, when one

examines the Impugned Order passed in revisional proceedings under Section 23, the Collector appears to have examined the mutation entry and has commented that it such entry has wrongly depicted the facts, and that the path ought to have been recorded on Gat No.214/2/B.

6. It is apparent that the Revisional Authority has not squarely dealt with the matrix of facts that are actually germane. There is a mutation entry squarely available on the Subject Parcel and that needed to have been considered and squarely dealt with in terms of access to the Petitioner's Parcel, rather than another path being available in a different Gat number which has no linkage to the Petitioner's Parcel, being considered and commented upon.

7. Learned Advocate for the Respondents who are affected by the Mamlatdar's order and who had filed a revision which led to the Impugned Order, submits that the Mamlatdar's order itself was without jurisdiction inasmuch as it was dealt with by the Sub-Divisional Officer, Yeola ("**SDO**"), who had no jurisdiction in the matter and it ought to have been considered by another SDO. The jurisdictional objection taken by these Respondents was admittedly not taken up as a ground in the revision application and it is evidently an afterthought.

8. It is apparent that the transfer of the matter was effected by order dated January 10, 2023 designating the Tahsildar, Nandgaon to conduct the proceedings under the Mamlatdars' Courts Act. It is also noteworthy that this transfer order was passed way back on January 10, 2023 and till date, no jurisdictional objection even in terms of a Writ Petition questioning the jurisdiction has been taken up. Be that as it may, even the revision application does not take up the jurisdictional objection.

9. In these circumstances, the objection on the ground of jurisdiction is untenable and is rejected.

10. As regards the objection on merits, the two pathways shown on the two different parts of land present a position of lack of objectivity in the Impugned Order. The Impugned Order ought to have squarely dealt with the 20 feet wide path said to exist in the Subject Parcel connecting to the Petitioner's Parcel. The core factual issue in the present case is the interconnection between the Subject Parcel and the Petitioner's Parcel. The allegation about obstruction relates to the purported walking path connecting these two parcels situated on the Subject Parcel. The contention that it has existed for more than 45 years is consistent with Mutation Entry No. 547. These are facets that have

been gone into by the Learned Tahsildar, who passed the order dated June 28, 2023 in the Petitioner's favour.

11. A Panchanama dated February 20, 2023 contains a map which points to another pathway found on Gat No.214/2/A and relates to the path connecting Gat No. 216 to the road. On the other hand, the Panchnama dated November 14, 2022 which squarely deals with the Subject Parcel and the Petitioner's Parcel clearly shows the pathway on the Subject Parcel. That apart, the Panchnama dated April 12, 2023, which is after these two versions and after the transfer of the case to the Tahsildar, Nandgaon, squarely points to the link between the Subject Parcel and the Petitioner's Parcel. It is against this backdrop, that the analysis in the Impugned Order calls for comment.

12. The Impugned Order holds that because Gat No.214 came to be divided into multiple plots, the Gat No.214/A/2 contains the road and that it has been shifted to the southern end. The Impugned Order holds that the mutation entry ought to have been revised to depict the road on Gat No.214/A/2 and that had wrongly shown the pathway on the Subject Parcel.

13. This is a digression since the issue on hand was as to whether there has been a continued use of the pathway on the Subject Parcel and

whether that had been used consistently for years, and has now been disrupted, thereby attracting the provisions of the Act. The original order by the Tahsildar Nandgaon squarely deals with the point. The Impugned Order simply states that the Tahsildar, Nandgaon did not deal with this issue of the shifting of the road upon the division of Gat No.214 and therefore, chose to interfere and revised the order allowing the revision application.

14. The issue in hand is not about whether the mutation entry was right or wrong, but the fact that the mutation entry only corroborates what has been explicitly found as a matter of fact in Case No.46 of 2022, in the Panchnama and by the Tahsildar, Nandgaon clearly pointing to the existence of such a path. Therefore, considering these multiple versions which are not squarely dealt with in the Impugned Order, purely to enable that the accurate facts are dealt with without commenting on what the mutation entry ought to have been, the matter is remanded to the Revisional Authority.

15. It is made clear that the Revisional Authority may examine the specific facts relating to the Subject Parcel and the Petitioner's Parcel and squarely deal with the two different paths on the two different parcels of land. The Revisional Authority shall give a fresh

opportunity of being heard to both the parties and squarely deal with both the separate paths referred to above and consider whether the original order of the Mamlatdar still requires to be revised.

16. The Petition is ***disposed of*** in the aforesaid terms. The parties shall present themselves before the Revisional Authority within a period of one week from the date of upload of this order and take instructions on how to proceed further in the matter.

17. All actions required to be taken pursuant to this order shall be taken upon receipt of a downloaded copy as available on this Court's website.

[SOMASEKHAR SUNDARESAN, J.]