

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 586 of 2024**

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PATEL DINESHBHAI MOHANBHAI & ORS.

Versus

PATEL MORARBHAI KARSHANBHAI & ORS.
=====

Appearance:

MR. NISHIT P GANDHI(6946) for the Petitioner(s) No. 1,2,3

MR MEET D KAKADIA(11896) for the Respondent(s) No.

2,3,4,5,6,7

MR VEDANT D GAIKWAD(10444) for the Respondent(s) No.

2,3,4,5,6,7

NOTICE SERVED for the Respondent(s) No. 1,10,11,12

NOTICE SERVED BY DS for the Respondent(s) No. 8,9
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CORAM:HONOURABLE MR. JUSTICE DIVYESH A. JOSHI**Date : 26/02/2026****ORDER**

1. By way of present petition under Articles 226 and 227 of the Constitution of India, the petitioners have sought for the following main relief:

"A. Your Lordships may be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or directions directing quashing and setting aside the impugned order dated 22.12.2023 passed by the respondent – Deputy Collector in Mam. Court Revision Case No.01 of 2023."

2. The facts of the case of the petitioners in nutshell can be summarized as under:

2.1. That respondent Nos. 1 to 7 herein – original plaintiffs have filed a suit under Section 5 of the

Mamlatdars' Court Act against the petitioners herein – original defendants seeking a way from the southern side of land bearing Survey No.265/1, which belongs to the petitioners, to enter their land bearing Survey Nos. 270 and 269 of village Anavada, Taluka & District Patan. It is the case of the plaintiffs – respondent Nos. 1 to 7 herein that they have an ancestral way to reach their agricultural field, which has been closed by the defendants – petitioners herein before 10 days of institution of the suit. Pursuant to the institution of suit by the plaintiffs, a notice came to be issued to the defendants and they have filed a detailed reply, inter alia, denying the averments made in the plaint as well as right of way of the plaintiffs. The defendants have specifically stated that the plaintiffs have purchased land bearing Survey Nos. 270 and 269 from the owners of Survey No.268 and they have a right of way from that Survey No.268. After considering and appreciating the materials available on record, the suit of the plaintiffs came to be dismissed by the Mamlatdar essentially on the ground that as per the say of the plaintiffs themselves, the way which is sought by them has not been used by them since last 10 years and during the course of spot inspection, the way, which is sought for by the plaintiffs, is not in existence.

2.2. Being aggrieved by and dissatisfied with the said order, the plaintiffs – respondent Nos. 1 to 7

herein have assailed the said order by preferring a revision before the Deputy Collector, wherein, the plaintiffs have completely changed their stand and claimed the way from western side of Survey No.265 Paiki 1, which is going towards Survey No.271 and thereafter to the field of the plaintiffs i.e. Survey No.270. The said revision of the plaintiffs has been allowed by the Deputy Collector by setting aside the order of the Mamlatdar and directing the petitioners to open the permanent old way which is on the western side of Survey No.265 Paiki 1. Being aggrieved by the said order of the Deputy Collector, present petition is filed.

3. Heard learned advocate Mr. Nishit P. Gandhi for the petitioners and learned advocate Mr. Meet Kakadia for respondent Nos. 1 to 7 and learned AGP Mr. Jay Trivedi for respondent Nos. 8 and 9. Though served, none appears for respondent Nos. 10 to 12.

4. Learned advocate Mr. Gandhi submits that by way of instituting the suit, the plaintiffs – respondent Nos. 1 to 7 herein have sought a right of way from the southern side of land bearing Revenue Survey No.165 Paiki 1, whereas, by preferring revision before the Deputy Collector, the respondent Nos. 1 to 7 have completely changed their version and sought a right of way from the western side of land bearing Revenue Survey No.165 Paiki 1, which is not permissible. He submits that the suit of the

plaintiffs has been dismissed by the Mamlatdar by specifically observing that the way which is sought by the plaintiffs i.e. the way which is alleged to have been used by the plaintiffs from western side of land bearing revenue survey No.165 Paiki 1 has not been used by the plaintiffs since last 10 years as per their own admission. He has read the provisions of Section 5(3) of the Mamlatdars' Court Act and submitted that the suit is required to be filed within a period of six months from the date on which the cause of action arose and therefore the Mamlatdar has rightly dismissed the suit of the plaintiffs keeping in mind the aforesaid provision of the Act. In support of his submission, learned advocate Mr. Gandhi has heavily put reliance upon the decision of this Court in the case of **Rohit Sunderlal Kabutarwala v. Ashokkumar Somabhai**, reported in **2016 JX(Guj) 72** as well as in the case of **Kanjibhai Godadbhai Chaudhary v. Virsang Fuljibhai Chaudhary**, reported in **2023 JX(Guj) 28**. He further submits that by preferring a revision before the Deputy Collector, the plaintiffs have sought altogether a different way which is passing from western side of land bearing Revenue Survey No.165 Paiki 1. He submits that the said revision has been allowed by the Deputy Collector. The view adopted by the Deputy Collector is not just, fair and legal and based upon the sound principle of law and therefore the order passed by the Deputy Collector is required to be quashed and set aside. He further submits that the Deputy

Collector has also not appreciated the fact that respondent Nos. 10 to 12 were not joined at the time of institution of the suit and they have been joined for the first time at the stage of revision and therefore the revision ought not to have been entertained by the Deputy Collector on the ground of non-joinder and misjoinder of the parties. He further submits that the plaintiffs had made a false statement on oath before the revenue authorities and suppressed material facts and the Deputy Collector has not appreciated the said aspect at the time of allowing the revision filed by the plaintiffs and therefore the order passed by the Deputy Collector is not maintainable. Learned advocate Mr. Gandhi further submits that it is well settled that while entertaining a revision, the revisional authority is not empowered to go beyond the scope of the pleadings, introduce new facts and/or make out completely a new case that was not argued before the lower authority and by doing so the Deputy Collector has exceeded its jurisdiction and therefore also the order passed by the Deputy Collector is required to be quashed and set aside and order passed by the Mamlatdar is required to be upheld. In support of his submission, learned advocate Mr. Gandhi has put reliance upon the decision of the Hon'ble Apex Court in the case of ***Dalip Singh v. State of Uttar Pradesh***, reported in **(2010) 2 SCC 114**.

5. On the other hand, learned advocate Mr. Kakadia for respondent Nos. 1 to 7 – original plaintiffs has

submitted that the plaintiffs have a right of way to approach their agricultural land through survey No.265, which is sub-divided between the petitioners and respondent Nos. 10 to 12 herein. The petitioners as well as respondent Nos. 10 to 12 herein have, in connivance with each other, tried to close the entire right of way of the plaintiffs and plaintiffs have no other alternative way to reach their agricultural field and therefore the Deputy Collector has rightly allowed the revision and directed the petitioners to open the way passing from the western side of land bearing Revenue Survey No.265 Paiki 1. He submits that the order passed by the Deputy Collector is in consonance with the provisions of the Mamlatdars' Court Act as the objective of the Act is to ensure that no field is left uncultivated for want of a way. Therefore, the Deputy Collector could not be said to have committed any error of law and/or facts, which warrants any interference by this Court. He submits that as a temporary arrangement between the parties, on account of existence of two ways, some portion of land remained to be uncultivated and therefore all the parties agreed that respondents can use one way out of two existing ways and the said position continued for 10 years. However, the petitioners as well as respondent Nos. 10 to 12 have, in connivance with each other, closed both the ways and therefore respondents are not in a position to reach their land. He further submits that if the prayer as sought for by the petitioner is to be considered, in that

event, the land of the respondents would be landlocked. He further submits that it is well settled that when no way is available for a person to reach his agricultural field, in that event, as per the provisions of the Act, the revenue authority concerned is empowered to grant shortest possible way. In support of his submissions, learned advocate Mr. Kakadia has relied upon the decision of this Court rendered in Civil Revision Application No.206 of 2014 on 24.06.2015 as well as decision in the case of Faridmiya Majammiya Chavda v. State of Gujarat, reported in 2015(0) AIJEL-HC-233667. He, therefore, urges that the petition may be dismissed.

6. Having heard learned advocates appearing for the parties and having considered the materials placed on record, it transpires that respondent Nos. 1 to 7 herein – original plaintiffs have filed a suit under Section 5 of the Mamlatdars' Court Act against the petitioners herein seeking a way from the southern boundary of land bearing Survey No.265/1, which is situated on the eastern side of various parcels of land of the plaintiffs. The said suit came to be dismissed by the Mamlatdar by holding that as per the say of the plaintiffs themselves, the way which is sought for by them has been blocked since last 10 years. As per the provisions of Section 5(3) of the Mamlatdars' Court Act, the suit is required to be filed within a period of six months from the date on which the cause of action arose and therefore, in the

opinion of this Court, the Mamlatdar has rightly dismissed the suit of the plaintiffs keeping in mind the aforesaid provision of the Act. The respondent Nos. 1 to 7 herein have assailed the said order of the Mamlatdar by way of preferring revision before the Deputy Collector. It is pertinent to note that at the time of preferring the revision, the respondent Nos. 10 to 12 herein have been joined as party respondents, though they were not joined by the plaintiffs at the time of institution of the suit and the plaintiffs have completely changed their version before the Deputy Collector and sought an altogether different way i.e. the way which is passing from western boundary of land bearing Revenue Survey No.265 Paiki 1, which is on the southern side of various parcels of land of the plaintiffs. The Deputy Collector has allowed the said revision by directing the petitioners and respondent Nos. 10 to 12 herein to allow the respondents to use the way which is passing from western boundary of land bearing Revenue Survey No.265 Paiki 1, which is on the southern side of various parcels of land of the plaintiffs. Thus, it transpires that the Deputy Collector has allowed the revision by directing the petitioner and others to open an altogether different way, which is not claimed by the plaintiffs at the time of institution of the suit. I have also gone through the village map as well as satellite map produced by both the parties. It is well settled that while exercising the revisional powers, the revisional authority is

required to consider and appreciate the legality and validity of the order of the subordinate authority and it shall not go beyond the pleadings instituted before the subordinate authority and introduce new facts and/or make out completely a new case that was not argued before the lower authority.

7. It is also pertinent to note that the suit of the plaintiffs has been dismissed by the Mamlatdar after appreciating and considering the materials and documents placed on record as well as considering the fact that the plaintiffs themselves have admitted that the way, which is sought for by them has been closed since last 10 years. Moreover, the way which is claimed by the plaintiffs is also not in existence. I have also gone through the orders passed by both the revenue authorities and I am of the considered view that the Deputy Collector has exceeded his jurisdiction while issuing directions to the petitioners and respondent Nos. 10 to 12 herein to allow the respondent Nos. 1 to 7 to use altogether a different way which was not the subject matter of the original suit. Thus, merely on the said ground, the petition deserves consideration. Accordingly, the petition is allowed. The impugned order passed by the Deputy Collector is hereby quashed and set aside.

(DIVYESH A. JOSHI, J)

LAVKUMAR J JANI