



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9041 OF 2021

Bajirao s/o Chimaji Wafare

....Petitioner

VERSUS

Sadashiv s/o NarayanLonkar

....Respondents

.....

Mr. V.R. Dhorde, Advocate for petitioner

Mr. A.T. Kanawade, Advocate for R.No.1 and 2

.....

CORAM : SIDDHESHWAR S. THOMBRE, J.

DATE : 4th MAY, 2026

ORDER:

1. Heard learned counsel for the respective parties.
2. The petitioner is aggrieved by the order dated 2/6/2021, passed by learned Sub-Divisional Officer, Parner, District Ahmednagar in Revision No.274/2020, thereby partly allowing the revision filed by the respondents No.1 and 2.
3. Mr. V.R. Dhorde, learned counsel for the petitioner submitted that, the respondent No.1 and 2, who claim to be the

owners of the land Gat Nos.1080, 1079 and 1077, filed an application under Section 5(2) of the Mamlatdars Courts Act, 1905 , contending that they have been using the pathway passing between land Gat Nos.1085 and 1082 East-West for going to their lands and the said pathway has been obstructed by the present petitioner. Pursuant to the application, the panchanama was carried out and the spot inspection was conducted. After the said panchanama, it nowhere reflects that there was way in existence much less the same was obstructed by the petitioner. He contended that, in fact the way was in his own land and same was being used for the purpose of cultivating his own land and they are using the petitioner's brothers.

4. In fact the respondent No.1 and 2 are cultivating their own lands and having alternate way. He submitted that, as this Court granted interim stay to the order dated 21/8/2021, the respondents are cultivating the same and the respondents' land is protected land and only to create new way from the petitioner's land, such application was filed. He further submits that, he also relied upon some of the photographs by contending that the

respondents are cultivating the said land though after the order passed by this Court they are cultivating the same. He further points out that, the road is in existence. Therefore, the question of obstruction does not arise.

5. Per contra, Mr. Kanawade, learned counsel for respondent No.1 and 2 supports the order passed by the Sub-Divisional Officer and invited my attention to the copies of some of the photographs, by contending that the petitioner has obstructed the way which was in existence. He submits that, two years after filing of the application, the panchanama was conducted and the present petitioner ploughed the agricultural land and therefore, there was no any sign to show that there was way. Learned counsel for the respondents further submits that, the respondents are not having alternate way. Therefore, they are not in a position to cultivate their land. Learned counsel for the respondents invited my attention by contending that when the panchanama was effected, they were not present and the Sub-Divisional Officer has recorded a finding that the petitioner was not present when the panchanama was conducted. Therefore, the Sub-Divisional Officer has rightly

allowed the application partly.

6. Having heard learned counsel for both the parties and after going through the application filed by respondents No.1 and 2 as well as the panchanama which is at Page No.20 of the memo of Writ Petition, the revenue authorities have specifically recorded a finding that there are no any signs of having road of pathway which reaches to the field of respondent No.1 and 2. On the contrary, the panchanama clearly reveals that the way was in the field of the petitioner and that was shown up to the field of the petitioner only. More particularly, as regards the contention of the respondents that they were not present at the time of panchanama, but the said contention is contrary to the record.

7. I have gone through the panchanama and more particularly the names of respondent No.1 and 2 are specifically mentioned in the same. I have also gone through the copy of sketch map and also the photographs from which it clearly shows that, after the order passed by this Court, the interim order was operational till 2021 and the respondents are cultivating their land.

If the respondent No.1 and 2 are not having any way to reach their field, then the respondent No.1 and 2 are required to file application before the revenue authorities under Section 143 of the Maharashtra Land Revenue Code, 1966.

8. Considering the entire documents which are placed along with the Writ Petition, I find that, there was no customary way which was in existence and even it was not reflected as per the panchanama and pursuant to that, the Tahsildar has rejected the application, but the Sub-Divisional Officer, by recording the finding that the respondent No.1 and 2 were not present when the panchanama was effected, but the fact remains that, such a finding is contrary to the record as the panchanama clearly shows that the respondent No.1 and 2 were present. Therefore, I find that the learned Sub-Divisional Officer has recorded a finding which is contrary to the record and has committed an error while allowing the revision filed by the respondent No.1 and 2. Therefore, I am inclined to allow the Writ Petition.

9. In the result, the Writ Petition is allowed. The order

dated 2/6/2021, passed by learned Sub-Divisional Officer, Parner, District Ahmednagar in Revision No.274/2020 is hereby quashed and set aside. It is made clear that, the respondents No.1 and 2 are at liberty to file application under Section 143 of the Maharashtra Land Revenue Code, 1966 and if such application is filed, the authority to consider the same in accordance with law.

(SIDDHESHWAR S. THOMBRE, J.)

fmp/-