

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

WRIT PETITION NO.6071 OF 2014

1. Bhagwat Namdeo Nirmal,
Age 59 years, Occu. Agri.,
 2. Babasaheb Namdeo Nirmal,
Age 56 years, Occu. Agri.,
- Both R/o Pimpri Nirmal,
Taluka Rahata, Dist.Ahmednagar .. Petitioners

Versus

1. Dadasaheb Namdeo Nirmal,
Age 51 years, Occu. Agri.,
 2. Sandeep Dadasaheb Nirmal,
Age 30 years, Occu. Agri.,
 3. Kailash Dadasaheb Nirmal,
Age 27 years, Occu. Agri.,
 4. Balu Eknath Illhe,
Age 44 years, Occu. Agri.,
 5. Arjun Eknath Illhe,
Age 42 years, Occu. Agri.,
 6. Chandrabhan Kashinath Illhe,
Age 54 years, Occu. Agri.,
 7. Laxman Kashinath Illhe,
Age 52 years, Occu. Agri.,
 8. Mohan Kashinath Illhe,
Age 50 years, Occu. Agri.,
 9. Deoram Kashinath Illhe,
Age 48 years, Occu. Agri.,
 10. Sitaram Kashinath Illhe,
Age 46 years, Occu. Agri.,
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| <ol style="list-style-type: none"> [11] Suman Babasaheb Sale,
Age 48 years, Occu. Agri., [12] Vimal Chandrabhan Telore,
Age 47 years, Occu. Agri., | <p>} Petition is dismissed as
} against Respondents No.
} 11 and 12 as per Court's
} order dated 28.11.2014</p> |
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[13]	Thakubai Kashinath Illhe, Age 79 years, Occu. Nil	} Petition is dismissed as } against Respondent No. } 13 as per Court's order } dated 28.11.2014
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14. Sukhdeo Karbhari Gunjal,
Age 74 years, Occu. Agri.,

Respondents No.1 to 14
R/o Pimpri Nirmal,
Taluka Rahata, Dist.Ahmednagar

15.	Pushpa Manikrao Shete, Age 66 years, Occu. Agri., R/o Sahyog Housing Society, Newasa road, Shrirampur, Taluka Shrirampur, District Ahmednagar	.. Respondents
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Mr R.R.Karpe, Advocate for petitioners
Mr S.B.Kadu, Advocate for respondent No.1
Mr Y.S.Choudhari, Advocate for respondents No.5, 8 to 10

CORAM : N.W. SAMBRE, J.

**DATE OF RESERVING
THE ORDER : 24th February 2015**

**DATE OF PRONOUNCING
THE ORDER : 5th March 2015**

ORDER

1. This petition is by plaintiffs in Regular Civil Suit No.781 of 2013 initiated on the file of learned Civil Judge, Junior Division, Rahata in which they have prayed for declaration of an order of Tahsildar passed in Case No.17/2013 granting right of way in favour of the defendants from East Side of Gut No.106 and West Side of Gut Nos.50 and 51 for entering into Gut No.52, as illegal. The learned trial Court has rejected application at Exhibit 5 seeking injunction by an order dated

28th March 2014 and the same confirmed by the learned District Judge-1, Kopargaon, in Misc.Civil Appeal No.14/2014, on 24th June 2014 and as such, present petition.

2. The petitioners, while questioning the legality and validity of both the orders refusing injunction in their favour, have invited attention of this Court to the fact that earlier attempt on the part of respondents in securing order under the provisions of Section 5 of the Mamlatdar's Courts Act had been unsuccessful upto this High Court. It is urged that the said Mamlatdar's Court in the capacity of an authority under Section 143 of the Maharashtra Land Revenue Code has ordered way in favour of the defendants by carving out the way from East side of Gut No.106 and West side of Gut Nos.50 and 51 for entering Gut No.52. According to learned Counsel for the petitioners, both the Courts below have lost sight of the significant fact that the respondents herein were unsuccessful before the Mamlatdar's Court and successful before Tahsildar in the proceedings under Section 143 of the Maharashtra Land Revenue Code, they are not entitled for right of way. The effect of the order under Section 5 of the Mamlatdar's Courts Act, in the submission of learned counsel Mr Karpe for petitioners, should have been discussed and gone into by both the Courts below. He further urged that the lower appellate Court, despite convinced of the fact that learned trial Court has not recorded any finding as regards prima facie case, balance of convenience and irreparable loss, yet has failed to interfere with the order passed by learned trial Court. He urged that both the orders suffer from non consideration of material placed before both the courts.

3. Learned Counsel for respondents, while resisting the above referred submissions, would urge that the proceedings under Section 5 of the Mamlatdar's Courts Act cannot be equated with the proceedings under Section 143 of the Maharashtra Land Revenue Code. According to him, the proceedings under Section 5 of the Mamlatdar's Courts Act are for the purpose of removal of encroachment on the way already in existence whereas, proceedings under Section 143 of the Maharashtra Land Revenue Code are for claiming fresh right of way. According to him, considerations while passing the order under both the Sections are altogether different and both the Courts below have taken into account the effect of passing of order under Section 143 of the Maharashtra Land Revenue Code. He further urged that perusal of the orders passed by the learned trial Court and learned lower appellate Court reflects that the trial Court has taken into account the admitted facts on record and has proceeded to pass order, whereas the lower appellate Court has decided the proceedings after appreciation of merits of the matter. He has placed reliance upon the judgments of this Court in the matter of **Krushna s/o Damaji Choudhari and anr., Vs. Additional Commissioner, Nasik Division and others**, reported in **2012 (1) Mh.L.J.795** and **Pandurang Chandrabhan Bauche and anr. Vs. Jalindhar Sarandhar Tupe and ors.**, reported in **2009 (3) Mh.L.J.467**, so as to canvass the contention as regards the scope of Section 5 of the Mamlatdar's Courts Act and Section 143 of the Maharashtra Land Revenue Code.

4. After giving thoughtful consideration to the issue sought to be canvassed before this Court that proceedings under the Mamlatdar's Courts Act always operate in different sphere than the one under Section 143 of the Maharashtra Land Revenue Code. In given case, the order under Section 5 of the Mamlatdar's Courts Act will follow the order under Section 143 of the Maharashtra Land Revenue Code, however, the same cannot run concurrently as there is vast difference as regards sphere in which both the provisions operate. It is also required to be noted that the proceedings under both the sections operate in altogether different spheres i.e. Mamlatdar Court is concerned with removal of encroachment on existing road, whereas Section 143 of the Maharashtra Land Revenue Code is concerned with providing for fresh right of way over the boundaries. The only common aspect in both these proceedings appears to be that they lack originality i.e. trait as these proceedings are always subject to final outcome of the civil dispute initiated before the competent civil Court.

5. The fact remains that the orders under both the proceedings are being trait in nature, the Courts below, in my opinion, proceeded to consider the claim of the petitioners-plaintiffs on the said line. Perusal of the order passed by the learned trial Court reflects that the it has considered a few admitted facts which are as under :

“7. Admitted Facts are -

- (a) the ownership and possession of the respective lands of the plaintiffs and defendants.

- (b) The topography of the lands of both as per the village map.
- (c) Application u/s 5 of Mamlatdar Court Act being rejected and application u/s 143 of M.L.R. Code being allowed in RTS No. 17/13."

6. Learned trial Court has referred to the order passed by Tahsildar in RTS No.17/2013 under Section 143 of the Maharashtra Land Revenue Code and has noticed that the said order is passed by the the Tahsildar as *quasi* judicial authority. The trial Court was alive of the fact that order passed by the Tahsildar under Section 143 of the Maharashtra Land Revenue Code is provisional in nature and subject to the easement that would be declared by the civil Court. The learned trial Court though has not in express terms given finding as regards prima facie case, however, has in clear terms observed about aspects of balance of convenience and irreparable loss being against the present petitioners-plaintiffs. The lower appellate Court was also alive of the fact as regards passing of the order under Section 143 of the Maharashtra Land Revenue Code, by the Tahsildar. Lower appellate Court has taken note of the fact as regards personal visit of Tahsildar to the spot before passing order under Section 143 of the Maharashtra Land Revenue Code. The lower appellate Court has noticed that there is a common boundary between Gut No.106 on one part and Gut Nos.50 and 51 on the other part. Though the lower appellate court has further noticed that to the North side of Gut No.106 as well as Gut No.50, there is public road leading to village

Wakadi, however, has also noted that there is no further road available to approach the land Gut No.52 from the said public road or from any other direction. As such, the lower appellate Court has reached to a conclusion that the order of the Tahsildar does not call for any interference and there is no case made out by the present petitioners.

7. In such view of the matter, in my opinion, both the Courts below have rightly rejected the claim of present petitioners for grant of injunction prayed by them. The learned Counsel for the respondents, in my opinion, convincingly distinguished scope of Section 143 of the Maharashtra Land Revenue Code and that of Section 5 of the Mamlatdar's Courts Act and for that purpose has rightly placed reliance upon the judgment in the matter of **Krushna s/o Damaji Choudhari and anr., Vs. Additional Commissioner, Nasik Division and others** (cited supra).

8. In the light of above, no case for interference is made out. Writ Petition fails and stands dismissed. There shall be no order as to costs.

(N.W. SAMBRE, J.)

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At this stage, learned Counsel for the petitioners Mr Karpe urged that the effect and operation of the present order be stayed for four weeks, which request is objected by on the ground that by learned Counsel for the respondents on the ground that the respondent is unable to cultivate the land, as the access to his farm is not available.

Having regard to the above facts, the interim relief is continued for a period of two weeks from today.

(N.W. SAMBRE, J.)

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