

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

**WRIT PETITION NO. 4421 OF 2019**

RAHUL AATMARAM KALDATE AND OTHERS  
VERSUS  
THE ADDITIONAL COLLECTOR (REVENUE) JALNA AND  
OTHERS

**WITH  
CIVIL APPLICATION NO. 14326 OF 2019**

DEELIP KANTILAL HOLANI AND ANOTHER  
VERSUS  
RAHUL S/O ATMARAM KALDATE AND OTHERS

...

Advocate for the Petitioners : Shri V. B. Kulkarni  
AGP for Respondent Nos. 1 to 4 : Shri N. T. Bhagat  
Advocate for Respondent Nos. 5 and 6 : Shri D. A.  
Mane h/f. Shri Milind Patil  
Advocate for Respondent No. 8 : Shri Akash Gadhe h/f.  
Shri S. J. Salunke

...

**CORAM : RAVINDRA V. GHUGE, J.**

**DATED : 06<sup>th</sup> DECEMBER, 2019**

...

***PER COURT :***

1. On 02/05/2019, this Court (Coram : V. L. Achliya – J.) had passed the following order :-

1. *"In brief, it is the contention of the learned counsel for the petitioner that they are the owners and in possession of agricultural field bearing Gat No. 76 admeasuring 2 H 80 Ares, situated at*

*village Aamba, Tq. Partur, District Jalna.*

*2. The respondents No. 5 and 6 filed an application under section 5 of the Mamlatdar's Courts Act, 1906, claiming that the road in existence has been obstructed by the respondent named in the application i.e. respondent No. 7 Laxman Uttamrao Kaldate. The petitioners though owners and in possession of land Gat No. 76 and affected party they were not made party to said proceeding before the Tahsildar Partur. Without making the respondents as party and misleading the Mamlatdar's Court the order dated 15.06.2018 got passed in favour of respondents No. 5 and 6. The respondent No. 7 who is owner of land Gat No. 78 preferred an appeal before the Additional Collector Jalna, which is rejected. Since the order was obtained without making the petitioners as party before the proceeding, the petitioners have filed this petition and challenged the order. In support of the submission that they are the owners and in possession of Gat No. 76 the petitioners are produced 7 x 12 extract of Gat No. 78.*

*3. On due consideration of the submissions advanced, I am of the view that the arguable case is made out. Prima facie, the order appears to have been passed in gross violation of principles of natural justice i.e. without giving opportunity of hearing to the petitioner and, therefore, the indulgence of the Court is necessary, as the petitioners are not party to the order. Hence, following order.*

**ORDER**

- 1. Issue notice to the respondents returnable on 26.06.2019.*
- 2. Learned AGP waives service of notice for respondents No. 1 to 4.*
- 3. In the meantime there shall be ad-interim relief in terms of prayer clause 'F' till 26.06.2019.*
- 4. Stand over to 26.06.2019."*

3. Despite service of court notice, none appears for respondent Nos. 7 and 9.

4. The learned Advocate appearing on notice on

behalf of Respondent Nos. 5, 6 and 8 points out the first order passed by the Tahsildar under Section 5(2) of the Mamlatdar's Courts Act dated 15/06/2018. The cousin brother of Petitioner No.1, who is a joint owner of the share of land of the Petitioners, was a party to the proceedings. Thereafter, the Revisional Authority delivered an order on 26/11/2018 under Section 23(2). The Petitioners have thereafter, approached the Civil Court by preferring Regular Civil Suit No. 4/2019 on 07/01/2019 and then filed this Writ Petition on 08/03/2019. Though the prayer clauses set out in the suit have been differently worded, the relief sought is effectively the same relief that is sought in this petition.

5. Considering the above, I called upon the learned Advocate for the Petitioners to submit as to whether this Court should now assess whether the Petitioners have played a fraud on this Court.

He submits that the Petitioners would proceed only with the pending suit and all contentions and claims of the parties may be made subject to the result of the petition. He, however, requests that as this Court has granted protection to the Petitioners by staying the effect of the earlier two orders passed under the 1906 Act, the said protection may be continued for a period of three months by disposing off this petition.

6. The learned Advocates appearing on behalf of respondent Nos. 5, 6 and 8 submit that the application seeking temporary injunction filed by the Petitioners in the suit is still pending and is listed on 16/12/2019 for advancing oral submissions. If the parties advance their oral submissions on the said date, the Trial Court would be in a position to deliver an order on the same date or within a period of one month.

7. Considering the above, this petition is disposed off. The impugned orders dated 15/06/2018 and 26/11/2018 shall be subject to the result of the application Exhibit 5 filed by these Petitioners. The litigating sides shall advance their oral submissions on 16/12/2019 and in any case, the oral submissions shall conclude on 17/12/2019. Thereafter, the Trial Court would deliver its order on or before 10/01/2020.

8. The ad interim protection granted by this Court by order dated 02/05/2019 shall continue till 10/01/2020 or till the Exhibit 5 application is decided, whichever is earlier. All contentions of the litigating sides are kept open to be considered in the pending suit.

9. The pending Civil Application No. 14326/2019 stands disposed off.

**(RAVINDRA V. GHUGE, J.)**

shp/-