

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

WRIT PETITION NO.7709 OF 2016

Kacharu s/o Baburao Nangare,
Age : 56 years,
Occupation : Service and Agriculture,
R/o Shevgaon, Tq.Shevgaon,
Dist.Ahmednagar.

...PETITIONER

-VERSUS-

- 1 The State of Maharashtra.
Through the District Collector,
Ahmednagar.
- 2 The Sub Divisional Officer,
Pathardi Region, Pathardi,
Dist.Ahmednagar.
- 3 The Tahasildar,
Shevgaon, Dist.Ahmednagar.
- 4 Mohan s/o Jagunnath Badadhe,
Age : 56 years, Occupation : Agriculture
- 5 Vishnu s/o Jagunnath Badadhe,
Age : 61 years, Occupation : Service/ Agriculture
- 6 Arjun s/o Jagunnath Badadhe,
Age : 46 years, Occupation : Service/Agriculture
- 7 Daulat s/o Yashwant Badadhe,
Age : 66 years, Occupation : Agriculture
- 8 Shobha Arjun Badadhe,
Age : 46 years, Occupation : Agriculture
- 9 Adinath s/o Shankar Badadhe,

Age : 44 years, Occupation : Agriculture

10 Vishwas s/o Shanka Badadhe,
Age : 58 years, Occupation : Agriculture

11 Narayan s/o Shankar Badadhe,
Age : 50 years, Occupation : Agriculture.

Respondent Nos.4 to 11 are
R/o Badadhe Vasti, Newasa Road,
Shevgaon, Tq.Shevgaon,
District Ahmednagar.

...RESPONDENTS

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Advocate for the Petitioner : Shri Arvind G. Ambetkar
AGP for Respondents 1 to 3/ State : Shri N.T. Bhagat
Advocate for Respondents 4 to 11 : Shri Nikhil S. Jaju
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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 20th February, 2020

Oral Judgment :

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

2 The petitioner is aggrieved by the order dated 24.12.2015
passed by the Revisional Authority under Section 23(2) of the Mamlatdars'
Courts Act, 1906 by which, Revision Application No.113/2013 filed by
respondent Nos.4 to 11 has been allowed and the earlier order of the
Tahasildar dated 16.06.2011 passed under Section 5(2) of the
Mamlatdars' Courts Act, 1906 allowing Rasta Case No.24/2010, has been

quashed and set aside.

3 Having heard the learned advocates for the respective sides and the learned AGP for quite some time, I have perused the petition paper book, inspection report and the judgment delivered by the learned Civil Judge, Junior Division, Shevgaon dated 04.01.2020 in RCS No.25/2013 filed by the petitioner along with his close relatives. The Trial Court has not granted any relief as regards the opening of the old Joharapur-Shevgaon road between the suit property and the land Gat No.1319. The Trial Court has only held as under :-

"11. The defendants have objection for the cutting of the branches of the trees coming in the suit property. It shows that the defendants have caused obstruction to the plaintiffs while cutting trees bushes coming in the suit property. This act of defendants shows that they have caused obstruction to the possession of plaintiffs over southern bandh of the suit property."

4 It is thus, obvious that the Trial Court has only held that the present respondents are preventing the trimming of the branches of trees, which are said to have leaned over the suit property and the removal of bushes/ thorns allegedly placed by the respondents purportedly to block the footpath.

5 On 14.11.2019, this Court had heard the learned advocates for the respective sides and found it appropriate to direct the Sub Divisional Officer, Pathardi Division, Pathardi to personally inspect the

spot in the presence of the parties and prepare a *panchanama*, sketch map and submit a detailed report. The spot inspection conducted by the Sub Divisional Officer, Pathardi in the presence of certain revenue authorities and the petitioner along with other adjacent land holders, indicates that, as the Government has laid the new tar road, which is known as Shevgaon-Newasa road, on the southern side, the old Shevgaon-Joharapur road has become defunct and it is admitted that the petitioner as well as the respondents are now using that portion for agricultural purposes in their respective properties. No signs were found to indicate the use of Shevgaon-Joharapur old road.

6 The learned advocate for the respondents submits, on instructions, for which this matter was adjourned on 18.12.2020, that the respondents are agreeable to permit the petitioner to use the said path purely as a footpath (*paul-vat*). The learned advocate for the petitioner submits, on instructions from the petitioner present in the Court, that he is agreeable to use the said path as a footpath.

7 In view of the above, this Writ Petition is disposed off by recording the statements of the litigating parties, as above, which shall bind them. Rule is discharged.