

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.2925 OF 2015**

1. Jalindare Dhondiram Kothule,
Age: 51 years, Occu. Agri. & Service.
2. Pratibha Rameshwar Kothule,
Age: 39 years, Occu. Agri. & Service.
3. Rameshwar Dhondiram Kothule,
Age: 44 years, Occu. Agri. & Service.
4. Raosaheb Bhausahab Mhaske,
Age: 4151 years, Occu. Agri.
5. Ashok Bhausahab Mhaske,
Age: 44 years, Occu. Agri.
6. Nandkishor Nivrutti Mhaske,
Age: 28 years, Occu. Agri.

All R/o. K-Hetakali, Tq. Shevgaon,
Dist. Ahmednagar.

..Petitioners

Versus

1. Raju Raosaheb Gobare,
Age: 33 years, Occu. Agri.
2. Bharat Bhausahab Gobare,
Age: 35 years, Occu. Agri.
3. Balu Sukhdeo Gobare,
Age: 33 years, Occu. Agri.
4. Kalyan Baurao Gobare,
Age: 32 years, Occu. Agri.
5. Pralhad Bhimrao Gobare,
Age: 58 years, Occu. Agri.
6. Deorao Raosaheb Gobare,
Age: 53 years, Occu. Agri.
7. Suman Raosaheb Gobare,
Age: 53 years, Occu. Agri.

8. Narayan Shamrao Mali,
Age: 73 years, Occu. Agri.
9. Hari Yadav Sasane,
Age: 63 years, Occu. Agri.
10. Narayan Yadav Sasane,
Age: 58 years, Occu. Agri.
11. Sadashiv Dagadu Gatkali,
Age: 31 years, Occu. Agri.
12. Eknath Bhaurao Borude,
Age: 68 years, Occu. Agri.
13. Laxman Satva Kate,
Age: 73 years, Occu. Agri.
14. Bhaskar Satva Kate,
Age: 68 years, Occu. Agri.
15. Bhausaheb Yadav Sasane,
Age: 55 years, Occu. Agri.

All are R/o. Karhetakali, Tq. Shevgaon,
Dist. Ahmednagar.

16. The State of Maharashtra,
Through its Secretary,
Revenue Department,
Mantralaya, Mumbai.
17. The Sub Divisional Officer,
Pathardi Division, Pathardi,
Dist. Ahmednagar.
18. The Tahsildar,
Shevgaon, Tq. Shevgaon,
Dist. Ahmednagar.

..Respondents

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Mr. Narayan B. Narwade, Advocate for the
Petitioners.
Mr. S. N. Morampalle, AGP for Respondents-State.

Mr. Jeevan R. Patil h/f Mr. G. B. Rajale, Advocate
for Respondent Nos.1 to 15.

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AND

**CIVIL APPLICATION NO.2824 OF 2022
IN
WRIT PETITION NO.2925 OF 2015**

1. Raju Raosaheb Gobare,
Age: 42 years, Occu. Agriculture,
R/o Karhetakali, Tq. Shevgaon,
Dist. Ahmednagar.
2. Bharat Bhausahab Gobare,
Age: 40 years, Occu. Agriculture,
R/o Karhetakali, Tq. Shevgaon,
Dist. Ahmednagar.
3. Balu Sukhdeo Gobare,
Age: 38 years, Occu. Agriculture,
R/o Karhetakali, Tq. Shevgaon,
Dist. Ahmednagar.
4. Kalyan Baurao Gobare,
Age: 37 years, Occu. Agriculture,
R/o Karhetakali, Tq. Shevgaon,
Dist. Ahmednagar.
5. Pralhad Bhimrao Gobare,
Age: 63 years, Occu. Agriculture,
R/o Karhetakali, Tq. Shevgaon,
Dist. Ahmednagar.
6. Deorao Raosaheb Gobare,
Age: 58 years, Occu. Agriculture,
R/o Karhetakali, Tq. Shevgaon,
Dist. Ahmednagar.
7. Suman Raosaheb Gobare,
Age: 58 years, Occu. Agriculture,
R/o Karhetakali, Tq. Shevgaon,
Dist. Ahmednagar.
8. Narayan Shamrao Mali,
Age: 78 years, Occu. Agriculture,
R/o Karhetakali, Tq. Shevgaon,

Dist. Ahmednagar.

9. Hari Yadav Sasane,
Age: 68 years, Occu. Agriculture,
R/o Karhetakali, Tq. Shevgaon,
Dist. Ahmednagar.
10. Narayan Yadav Sasane,
Age: 63 years, Occu. Agriculture,
R/o Karhetakali, Tq. Shevgaon,
Dist. Ahmednagar.
11. Sadashiv Dagadu Gatkali,
Age: 36 years, Occu. Agriculture,
R/o Karhetakali, Tq. Shevgaon,
Dist. Ahmednagar.
12. Eknath Bhaurao Borude,
Age: 73 years, Occu. Agriculture,
R/o Karhetakali, Tq. Shevgaon,
Dist. Ahmednagar.
13. Laxman Satva Kate,
Age: 78 years, Occu. Agriculture,
R/o Karhetakali, Tq. Shevgaon,
Dist. Ahmednagar.
14. Bhaskar Satva Kate,
Age: 73 years, Occu. Agriculture,
R/o Karhetakali, Tq. Shevgaon,
Dist. Ahmednagar.
15. Bhausahab Yadav Sasane,
Age: 60 years, Occu. Agriculture,
R/o Karhetakali, Tq. Shevgaon,
Dist. Ahmednagar. ..Applicants

Versus

1. Jalindare Dhondiram Kothule,
Age: 56 years, Occu. Agriculture,
R/o Karhetakali, Tq. Shevgaon,
Dist. Ahmednagar.
2. Pratibha Rameshwar Kothule,
Age: 44 years, Occu. Agriculture,
R/o Karhetakali, Tq. Shevgaon,

- Dist. Ahmednagar..
3. Rameshwar Dhondiram Kothule,
Age: 49 years, Occu. Agriculture,
R/o Karhetakali, Tq. Shevgaon,
Dist. Ahmednagar.
 4. Raosaheb Bhausaheb Mhaske,
Age: 46 years, Occu. Agriculture,
R/o Karhetakali, Tq. Shevgaon,
Dist. Ahmednagar.
 5. Ashok Bhausaheb Mhaske,
Age: 49 years, Occu. Agriculture,
R/o Karhetakali, Tq. Shevgaon,
Dist. Ahmednagar.
 6. Nandkishor Nivrutti Mhaske,
Age: 33 years, Occu. Agriculture,
R/o Karhetakali, Tq. Shevgaon,
Dist. Ahmednagar.
 7. The State of Maharashtra,
Through its Secretary,
Revenue Department,
Mantralaya, Mumbai.
 8. The Sub Divisional Officer,
Pathardi Division, Pathardi,
Dist. Ahmednagar.
 9. The Tahsildar,
Shevgaon, Tq. Shevgaon,
Dist. Ahmednagar. ..Respondents

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Mr. Jeevan R. Patil h/f Mr. G. B. Rajale, Advocate
for the Applicants.

Mr. S. N. Morampalle, AGP for Respondents-State.

Mr. N. B. Narwade, Advocate for Respondent Nos.1 to
6.

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AND

CIVIL APPLICATION NO.5193 OF 2015

IN

WRIT PETITION NO.2925 OF 2015

1. Jalindare Dhondiram Kothule,

Age: 51 years, Occu. Agri. & Service.

2. Pratibha Rameshwar Kothule,
Age: 39 years, Occu. Agri. & Service.
3. Rameshwar Dhondiram Kothule,
Age: 44 years, Occu. Agri. & Service.
4. Raosaheb Bhausaheb Mhaske,
Age: 4151 years, Occu. Agri.
5. Ashok Bhausaheb Mhaske,
Age: 44 years, Occu. Agri.
6. Nandkishor Nivrutti Mhaske,
Age: 28 years, Occu. Agri.

All R/o. K-Hetakali, Tq. Shevgaon,
Dist. Ahmednagar.

..Applicants

Versus

1. Raju Raosaheb Gobare,
Age: 33 years, Occu. Agri.
2. Bharat Bhausaheb Gobare,
Age: 35 years, Occu. Agri.
3. Balu Sukhdeo Gobare,
Age: 33 years, Occu. Agri.
4. Kalyan Baurao Gobare,
Age: 32 years, Occu. Agri.
5. Pralhad Bhimrao Gobare,
Age: 58 years, Occu. Agri.
6. Deorao Raosaheb Gobare,
Age: 53 years, Occu. Agri.
7. Suman Raosaheb Gobare,
Age: 53 years, Occu. Agri.
8. Narayan Shamrao Mali,
Age: 73 years, Occu. Agri.
9. Hari Yadav Sasane,

Age: 63 years, Occu. Agri.

10. Narayan Yadav Sasane,
Age: 58 years, Occu. Agri.
11. Sadashiv Dagadu Gatkali,
Age: 31 years, Occu. Agri.
12. Eknath Bhaurao Borude,
Age: 68 years, Occu. Agri.
13. Laxman Satva Kate,
Age: 73 years, Occu. Agri.
14. Bhaskar Satva Kate,
Age: 68 years, Occu. Agri.
15. Bhausahab Yadav Sasane,
Age: 55 years, Occu. Agri.

All are R/o. Karhetakali, Tq. Shevgaon,
Dist. Ahmednagar.

16. The State of Maharashtra,
Through its Secretary,
Revenue Department,
Mantralaya, Mumbai.
17. The Sub Divisional Officer,
Pathardi Division, Pathardi,
Dist. Ahmednagar.
18. The Tahsildar,
Shevgaon, Tq. Shevgaon,
Dist. Ahmednagar.

..Respondents

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Mr. Narayan B. Narwade, Advocate for the
Petitioners.

Mr. S. N. Morampalle, AGP for Respondents-State.

Mr. Jeevan R. Patil h/f Mr. G. B. Rajale, Advocate
for Respondent Nos.1 to 15.

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CORAM : SANDEEP V. MARNE, J.

DATED : 17th NOVEMBER, 2022.

ORAL JUDGMENT:-

1. Rule. Rule is made returnable forthwith. With the consent of the parties, matter is taken up for final hearing at the admission stage.

2. By this petition, petitioners assail order dated 30.11.2011 passed by Tahsildar under Section 5(2) of the Mamlatdar's Court Act, 1906 (for short 'the Act, 1906') directing them to provide access road for respondent nos.1 to 15. Since the revision filed by petitioners under provisions of Section 23(2) of the Act, 1906 has been rejected by the Sub Divisional Officer, Pathardi by his order dated 19.01.2015, that order is also challenged in the present petition.

3. Brief facts of the case are that, an application was made by respondent nos.1 to 15 on 14.12.2005 to the Tahsildar seeking right of way through survey nos.75, 76, 74 and 77. The land at survey no.76 is owned by petitioners. It appears that, the application referred to provisions of the Maharashtra Land Revenue Code, however, since sub-Section 2 of Section 5 of the Act, 1906 is also referred in that application, the same was possibly made under the provisions of Section 5(2) of the Act, 1906. During the pendency of that application, one Raju Raosaheb Gobare also made his own application dated 14.02.2011 to Collector, Ahmednagar seeking provision of a new access road for approaching land at survey no.74/2-A. His

application referred to the earlier application made by him to Tahsildar.

4. A panchanama was drawn on 24.03.2011. I would refer to the contents of the panchanama little later. The Tahsildar thereafter proceeded to pass order dated 30.11.2011 holding that there was an access road in East-West direction on boundary of survey nos.76 and 77 and that petitioners had created an obstruction on such access road.

5. Aggrieved by order passed by Tahsildar, petitioners filed revision under the provisions of Section 23(2) of the Act, 1906 before the Sub Divisional Officer, who was pleased to reject the same by order dated 19.01.2015. Orders passed by the Tahsildar and the Sub Divisional Officer are subject matter of challenge in the present petition.

6. During pendency of the petition, the Tahsildar issued letter dated 14.05.2015 directing Circle Officer, Erandgaon to execute Tahsildar's order. This led to filing of Civil Application No.5193/2015 by petitioners, in which this Court directed that the Tahsildar's notice dated 14.05.2015 be kept in abeyance. That interim order continues to operate till date.

7. Appearing for the petitioners Mr. Narwade, the learned counsel would submit that application was filed by respondent nos.1 to 15 demanding creation of a 'new road' and therefore, same was not maintainable under the provisions of Section

5(2) of the Act, 1906. Referring to the panchanama drawn, Mr. Narwade would submit that the panchanama did not conclude existence of any existing approach road and/or creation of any obstruction by petitioners. He would further submit that the panchanama also records demand made by respondent nos.1 to 15 for creation of 'new approach road'. Mr. Narwade would therefore submit that the findings recorded by Tahsildar are not supported by the panchanama. He would further submit that though all these points were specifically urged before the Sub Divisional Officer, he proceeded to ignore the same while rejecting the petitioners' revision.

8. Mr. Patil, the learned counsel appearing for respondent nos.1 to 15 opposes the petition and supports the order passed by the Tahsildar and Sub Divisional Officer. He would question maintainability of present petition on the ground that in absence of any violation of fundamental right of the petitioners, the present petition cannot be filed. He would further submit that the order of Tahsildar is fully supported by the panchanama. He would pray for dismissal of writ petition.

9. First, I would consider objection of Mr. Patil about maintainability of the petition. In my view the objection is stated only to be rejected. The proceedings filed before a Mamlatdar is a 'suit' under the provisions of the Act of 1906. The Act prescribes detailed procedure for deciding such

a suit by the Mamlatdar. He has powers of enforcing attendance of witnesses, to examine witnesses, to issuing injunctions, etc. Under Section 23 of the Act, 1906, no appeal can lie against any order passed by the Mamlatdar. Only a remedy of revision is prescribed under sub-Section 2 of Section 23 of the Act, 1906. After decision of such revision petition, there is no further remedy under the Act. The only remedy therefore would be to approach this Court under Article 227 of the Constitution of India. In the present case, the remedy of revision has admittedly been exercised. Therefore, under the provisions of Article 227 of the Constitution of India this Court can examine the correctness of the orders passed by the Tahsildar and Sub Divisional Officer. The Petition is thus maintainable.

10. Now I turn to the merits of the case. A short issue for determination is whether the Tahsildar had sufficient material before him to arrive at a conclusion that there existed an approach road which was obstructed by petitioners. Before I advert to the contents of the panchanama, it would be necessary to refer to the initial application made on behalf of respondent nos.1 to 15 for creation of vehicular access to their lands from east-west boundaries of survey no.75, 76, 74 and 77. More particularly, the application made by Shri. Raju Raosaheb Gobare specifically demands creation of 'new road'. It is pertinent to note that Shri. Raju Raosaheb Gobare is the son of applicant no.6 (Shri. Raosaheb Bhimrao Gobare)in

proceedings before Tahsildar. Furthermore, a reference was made in the application filed by respondent nos.1 to 15 to Maharashtra Land Revenue Code. Therefore, it appears that the request was essentially for creation of 'new access road' under the provisions of Section 143 of the Maharashtra Land Revenue Code, 1966. However, as observed hereinabove, since reference is also made to 'Section 5(2)', possibly an erroneous enactment namely Maharashtra Land Revenue Code was mentioned in the application by respondent nos.1 to 15 instead of the Act, 1906.

11. Now, I turn to the contents of the panchanama drawn on 24.03.2011. It specifically records that the same was drawn for the purpose of site inspection in pursuance of demand of Shri. Deorao Bhimrao Ghobare and Gobare Pralhad Shivraj for a 'new road'. The panchanama further records location of various lands, well and trees. It also records that on the South side there was old Erandgaon-Karhe Takali road. In entire panchanama there is no finding to the effect that on East-West boundaries of survey nos.74, 75, 76 and 77 there was existing road or that any obstruction was created thereon.

12. In the light of demand made by Applicants before Tahsildar for a 'new road' it would be appropriate to reproduce the provisions of section 5 of the Act of 1906 as under:

5. Powers of Mamlatdars' Courts. —

(1) Every Mamlatdar shall preside over a Court, which shall be called a Mamlatdar's Court, and which shall, subject to the provisions of sections 6 and 26, have power, within such territorial limits as may from time to time be 17[fixed by the State Government,-

(a) ..

(b) ..

(2) The said Court shall also, subject to the same provisions, have power within the said limits, where any impediment referred to in sub-section (1) is erected, or an attempt has been made to erect it, or, when any person is otherwise then by due course of law disturbed or obstructed, or when an attempt has been made so to disturb or obstruct any person, in the possession of any lands or premises used for agriculture or grazing or trees, or crops, or fisheries, or in the use of water from any well, tank, canal or water-course, whether natural or artificial, used for agricultural purposes, or in the use of roads or customary ways thereto, to issue an injunction to the person erecting or who has attempted to erect such impediment, or] causing, or who has attempted to cause, such disturbance or obstruction, requiring him to refrain from erecting or attempting to erect any such impediment or, from causing or attempting to cause any further such disturbance or obstruction.

(3) No suit shall be entertained by a Mamlatdar's Court unless it is brought within six months from the date on which the cause of action arose.

13. In so far as access road is concerned, the jurisdiction of a Mamlatdar under sub-section 2 of Section 5 of Act of 1906 is confined essentially to removal of obstruction. There is no jurisdiction to direct creation of a new access.

14. Coming back to the panchanama, as observed earlier there is no conclusive finding that there existed any access road on East-West boundaries of survey nos.74, 75, 76 and 77 or that any obstruction was created by Petitioners. It is therefore incomprehensible as to on what basis Tahsildar arrived at a conclusion that there was a road on East-West boundaries of survey nos.76 and 77. Furthermore in absence of any findings in the panchanama to the effect that any obstruction was created on such road, the Tahsildar has proceeded to hold in his order that petitioners created an obstruction. In my view, these findings recorded by Tahsildar are not supported by any documents on record. The Tahsildar himself did not conduct site visit nor was he a signatory to the panchanama. Therefore, in absence of any documentary evidence before him, the Tahsildar could not have recorded findings about existence of road or obstruction by petitioners. The findings of Tahsildar thus suffer from the vice of perversity, warranting interference by this court.

15. I have perused the Revision Petition filed by petitioners before Sub Divisional Officer and find that the aforesaid aspect was specifically highlighted by them before Sub Divisional Officer. The Sub Divisional Officer has however, not recorded any finding of this aspect and has proceeded to reject the Revision.

16. In my view, therefore, the orders passed by the Tahsildar and Sub Divisional Officer suffer from vice of perversity and non-application of mind. The same deserve to be set aside.

17. Accordingly, orders dated 30.11.2011 passed by Tahsildar and 19.01.2015 passed by Sub Divisional Officer are set aside.

18. Writ Petition is allowed. Rule made absolute in above terms.

19. Pending civil applications are also disposed of.

(SANDEEP V. MARNE)
JUDGE