

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

**WRIT PETITION NO.10047 OF 2021**

1. Namdev s/o Mangu Jadhav (Died)  
Through Govind s/o Namdev Jadhav  
Age: 36 years, Occu: Agriculture  
R/o: Ghadole Tanda, Tq. Jintur  
District Parbhani
2. Raju s/o Mangu Jadhav  
Age: 38 years, Occu: Agriculture  
R/o: Ghadole Tanda, Tq. Jintur  
District Parbhani
3. Vijay s/o Parmeshwarappa Mitkar  
Age: 38 years, Occu: Agriculture  
R/o: Ghadole Tanda, Tq. Jintur  
District Parbhani
4. Ramrao s/o Manji Rathod  
Age: 43 years, Occu: Agriculture  
R/o: Ghadole Tanda, Tq. Jintur  
District Parbhani
5. Kavnappa s/o Shankarappa Vindhe  
Age: 59 years, Occu: Agriculture  
R/o: Savali, Tq. Jintur  
District Parbhani
6. Dilipappa s/o Shankarappa Vindhe  
Age: 57 years, Occu: agriculture  
R/o: Savali, Tq. Jintur,  
District Parbhani
7. Maroti s/o Shankarappa Vindhe  
Age: 46 years, Occu: Agriculture  
R/o: Savali, Tq. Jintur,  
District Parbhani
8. Udhav s/o Dayalu Chauhan  
Age: 37 years, Occu: Agriculture  
R/o: Ghadole Tanda, Tq. Jintur,  
District Parbhani

10. Madhav s/o Dayalu Chauhan  
Age: 35 years, Occu: Agriculture  
R/o: Ghadole Tanda, Tq. Jintur,  
District Parbhani

11. Gajanan s/o Parmeshwarappa Mitkar  
Age: 45 years, Occu: Agriculture  
R/o: Ghadole Tanda, Tq. Jintur,  
District Parbhani

... Petitioners

Versus

1. The State of Maharashtra

2. Additional Collector,  
Collector Officer,  
Tq. Jintur, District Parbhani,

3. Sub-Divisional Officer,  
Tahsil Officer,  
Tq. Jintur, District Parbhani

4. Naib Tahsildar  
Tahsil Officer,  
Tq. Jintur, District Parbhani

5. Tahsildar,  
Tahsil Office,  
Tq. Jintur, District Parbhani

6. Pandurang s/o Chandrappa Vindhe  
Age: Major, Occu: Agriculture  
R/o: Savli, Tq. Jintur, Dist. Parbhani

7. Smt. Indubai d/o Dyandev Vindhe  
Age: Major, Occu: Agriculture,  
R/o: Savli, Tq. Jintur, Dist. Parbhani

... Respondents

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Mr. N. D. Jaiswal, Advocate for the Petitioners  
Mr. S. N. Kendre, AGP for the Respondents/State  
Mr. A. P. Raka, Advocate for Respondent Nos.6 & 7

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**CORAM : NITIN B. SURYAWANSHI, J.**

**DATE : 28<sup>th</sup> JULY, 2022**

**ORAL JUDGMENT :**

1. **RULE.** Rule made returnable forthwith. Heard finally with the consent of the learned Advocates for the respective parties.
2. The challenge in this petition is to the order passed by the Additional Collector, Parbhani in proceeding no.2021/A2/ROR/34, thereby setting aside the order dated 22-02-2021, passed by the Sub-Divisional Officer, Selu.
3. The petitioners filed a proceeding no.2016/ROR/CR under Section 5 of the Mamlatdar's Courts Act, 1906 (for short 'the said Act') before the Tahsildar, Jintur for removal of obstruction on the customary road by respondents. After conducting site inspection panchnama and recording statements and after considering the village map, the Tahsildar by order dated 15-06-2016, has allowed the said proceeding filed by the petitioners and directed respondent nos.6 & 7 to remove the obstruction caused by them to the customary way.
4. The respondent nos.6 & 7 challenged the order passed by the Tahsildar by filing a revision no.2016/ROR/A/32 before the Sub-Divisional Officer, Selu, District Parbhani. The Sub-Divisional

Officer, after hearing the parties, partly allowed the revision filed by respondent nos.6 & 7 and set aside the order dated 15-06-2016 passed by the Tahsildar and remanded the matter back to the Tahsildar. After remand, the Naib Tahsildar decided the matter on dated 25-09-2019, holding that it would not be proper to give way from applicants' lands, in the record, the old customary way is not mentioned, so also the same is not on the map and in terms of Section 5 of the said Act, road cannot be given. He further directed that the non-applicants therein shall use the customary way from Gat Nos.31, 23 and 17 as the old customary way.

5. This order since was passed against the interest of the petitioners was challenged by them by filing proceeding no.2020/ROR/A/10 before the Sub Divisional Officer, Selu. In the said proceeding, decision of the Tahsildar dated 25-09-2019 was set aside and the decision dated 08-11-2017 was confirmed.

6. The respondents nos.6 & 7 challenged the decision of Sub-Divisional Officer by filing appeal no.2021/AR/ROR/34 before the Additional Collector, Parbhani. The Additional Collector, after hearing the parties, allowed the appeal and set aside the order of Sub Divisional Officer dated 22-02-2021 and the petitioners are allowed to use Ghadoli to Tandulwadi pathway from Gat Nos.138, 134, 133, 192, 89, 11, 14, 15, 18, 19, 20, 21, 22, 28, 5, 37, 36,

9/1 as is used by other agriculturists as the customary way from western side of gat nos.23 & 24 and from the eastern side of gat no.22, for coming to their field gat no.17. This order is impugned in the present petition. Hence, this petition.

7. Having heard the learned Advocate for the petitioners, learned Advocate for the respondents and the learned Assistant Government Pleader for the respondents/state and after perusal of the record, this Court is of the considered view that the impugned order is unsustainable as the same is passed without jurisdiction.

8. Section 5 of the said Act provides for remedy to the aggrieved agriculturist to approach the Tahsildar for removal of obstruction on the customary way or the road which they are using to approach their respective fields. The order passed under Section 5 of the said Act can be challenged in revision under Section 23 of the said Act, which reads thus;

*"23. (1) There shall be no appeal from any order passed by a Mamlatdar under this Act.*

*(2) But the Collector may call for and examine the record of any suit for this Act, and if he considers that any proceeding, finding or order in such suit is illegal or improper, may, after due notice to the parties, pass such order thereon, not inconsistent with this Act, as he thinks fit.*

*(2A) The Collector may delegate the powers conferred on*

*him by this section to any [Assistant Collector, Deputy Collector or Assistant Commissioner] subordinate to him;  
(3) Where the Collector, [Assistant Collector, Deputy Collector or Assistant Commissioner] takes any proceedings under this Act he shall be deemed to be a Court under this Act."*

9. It is clear from the above section that no appeal is maintainable against the order passed under Section 5 of the said At. However, sub-section 2 of Section 23 of the said Act provides for remedy of revision for challenging the order passed by the Mamlatdar. Sub-section 2-A of the said Act provides that the Collector may delegate the powers conferred on him by this section to any Assistant Collector, Deputy Collector or Assistant Commissioner subordinate to him.

10. The learned Assistant Government Pleader, on instructions, makes a statement that the powers of the Collector are delegated to the Sub Divisional Officer, who has exercised jurisdiction under Section 23(2) of the said Act.

11. Sub-section 3 of Section 23 of the said Act provides that the Assistant Collector, Deputy Collector or the Assistant Commissioner as the case shall be deemed to be a Court.

12. Plain reading of the above provision makes it clear that there is no remedy of appeal provided under the said Act. Coming to the facts of the present case, it is a matter of record that by order dated 22-02-2021, the Sub Divisional Officer has set aside the decision of Tahsildar dated 25-09-2019 and confirmed his decision dated 08-11-2017. This decision is challenged by respondent nos.6 & 7 by filing appeal before the Additional Collector, Parbhani. The said appeal itself was not maintainable and therefore, the decision rendered by the Collector on the said appeal is without jurisdiction and therefore cannot be sustained.

13. In the result, writ petition is allowed. The impugned order dated 15-07-2021 passed by the Additional Collector, Parbhani in proceedings no.2021/A2/ROR/34 is hereby quashed and set aside. Rule is made absolute in the above terms.

14. The respondents are at liberty to avail appropriate remedy, in accordance with law.

**[NITIN B. SURYAWANSHI, J.]**