

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

**WRIT PETITION NO.14119 OF 2021
WITH
CIVIL APPLICATION NO.8701 OF 2022**

1. Vijay s/o Ashok Shirsath
Age: 36 years, Occu: Agri.,
R/o Aasadi Tq. Sillod,
District Aurangabad

... Petitioner

Versus

1. Ganpat s/o Bala Shirsath
Age: 70 years, Occu: Agri.,
R/o. Aasadi Tq. Sillod,
District Aurangabad

2. Sunitabai w/o Prakash Shirsath
Age: 49 years, Occu: Agri.,
R/o Aasadi Tq. Sillod,
District Aurangabad

3. Sangeetabai w/o Subhash Shirsath
Age: 48 years, Occu: Agri.,
R/o. Aasadi Tq. Sillod,
District Aurangabad

4. Saju s/o Sahebrao Shirsath
Age: 42 years, Occu: Agri.,
R/o. Aasadi Tq. Sillod,
District Aurangabad

5. Vilas s/o Sahebrao Shirsath
Age: 49 years, Occu: Agri.,
R/o. Aasadi Tq. Sillod,
District Aurangabad

6. Nandabai w/o Sahebrao Shirsath
Age: 55 years, Occu: Agri.,
R/o. Aasadi Tq. Sillod,
District Aurangabad

7. Kautik s/o Waluba Shirsath
Age: 70 years, Occu: Agri.,
R/o. Aasadi Tq. Sillod,
District Aurangabad

8. Narmadabai w/o Ashok Shirsath

Age: 55 years, Occu: Agri.,

R/o. Aasadi Tq. Sillod,

District Aurangabad

9. Kamlakar s/o Waluba Shirsath

Age: 64 years, Occu: Agri.,

R/o. Aasadi Tq. Sillod,

District Aurangabad

10. Raju s/o Kautik Shirsath

Age: 36 years, Occu: Service.,

R/o. Adg. Reg./Army Air Defence College,

Golabandha, Dist. Ganjan, State: Odisha,

Pin – 761052

[respondent no.10 deleted as per Court

Order dated 14.12.2022]

11. Mayur s/o Ashok Shirsath

Age: 22 years, Occu: Agri.,

R/o. Aasadi Tq. Sillod,

District Aurangabad

12. Nilesh s/o Kamlakar Shirsath

Age: 23 years, Occu: Agri.,

R/o. Aasadi Tq. Sillod,

District Aurangabad

13. Kavita w/o Vijay Shirsath

Age: 30 years, Occu: Agri.,

R/o. Aasadi Tq. Sillod,

District Aurangabad

14. Gajanan s/o Kautik Shirsath

Age: 50 years, Occu: Agri.,

R/o. Aasadi Tq. Sillod,

District Aurangabad

15. Tahsildar, Sillod

Tq. Sillod, District Aurangabad

16. Deputy Collector (EGS),

Aurangabad

... Respondents

...
 Mr. D. P. Palodkar, Advocate for the Petitioner
 Mr. A. A. Khande, Advocate for Respondent Nos.1 to 6
 Mrs. M. A. Deshpande, AGP for Respondent Nos.15 & 16
 ...

CORAM : S. G. CHAPALGAONKAR, J.

RESERVED ON : 22.02.2023

PRONOUNCED ON : 28.03.2023

JUDGMENT :

1. The petitioner impugns the order dated 29/11/2021, passed by respondent No.16/Deputy Collector (EGS), Aurangabad, in Proceeding No.2021/Mamlatdar/Revision/CR-12 as well as the order dated 04/09/2020 passed by respondent No.15/Tahsildar, Sillod, in Proceeding No.2020/ROR/CR-09/2020 filed under the provisions of Mamlatdars' Courts Act, 1906 [hereinafter referred to as 'the Act' for short].

2. The petitioner is the owner and possessor of land Gat No.189 situated at village Aasadi, Taluka Sillod, District Aurangabad. The respondent Nos.1 to 14 are the owners of lands Gat Nos.193, 190 and 183 situated in the same village adjacent to the petitioner's land. The respondent Nos.1 to 6 have initiated the proceeding No.2020/ROR/CR-09/2020 under Section 5 of the Act before Tahasildar / Mamlatdar seeking removal of alleged encroachment on customary east-west way passing from Gat No.189 village Aasadi to village Wakadi and further seeks an injunction against the petitioner and others from encroaching upon the way. According to respondent Nos.1 to 6, they are enjoying usage of customary way that passes through Gat No.189 owned by the petitioner but he obstructed such usage by putting stones and letting rainwater pass through the way. They claim for removal of obstruction and clearance of the way under the Act.

3. The petitioner opposes the application by filing his reply. He specifically denied the existence of road from Gat No.189 as has been alleged by respondent Nos.1 to 6. The petitioner contends that the approach road to the land of respondent Nos.1 to 6 as well as crematorium is available from eastern side of Gat No.189, which passes in north-south direction and further goes in east-west direction. The petitioner further contends that Regular Civil Suit No.113/2020 has been instituted by him before the Civil Judge, Junior Division, Sillod seeking injunction against respondent Nos.1 to 6 and the same is pending. The petitioner relies upon 7/12 extract to show availability of the approach road to the respondents.

4. It appears that respondent No.15 / Tahsildar in Proceeding No.2020/ROR/CR-09/2020 instructed Talathi and Circle Officer, Sillod to cause inspection of the site and submit a report. Accordingly, a panchnama is carried out and the report along with panchnama is submitted to respondent No.15 / Tahsildar. On the basis of aforesaid panchnama and report, respondent No.15 / Tahsildar concluded about existence of the cart road and obstruction to user of the road. The respondent No.15/Tahsildar issued directions against the petitioner to remove such obstruction and make a way from Gat Nos.189, 193, 190 and 183 passing from crematorium vide judgment and order dated 04/09/2020. The aggrieved petitioner filed a revision under Section 23(2) of the Act before respondent No.16 / Collector which came to be dismissed vide judgment and order dated 29/11/2021.

5. The learned Advocate Mr. D. P. Palodkar appearing for the petitioner submits that the Provisions of Section 5 of the Act empowers Mamlatdar to pass the order for removal of obstruction which is brought into existence within the period of six months prior to institution of the proceeding. He would submit that for that purpose, existence of the road must be established along with right of usage in favour of applicant. He would submit that in the present case, no evidence is available to indicate existence

of customary road or the obstruction created by the petitioner to such use. He would submit that a village map clearly shows the availability of an alternate road to the owners from Gat Nos.193 & 183. He submits that the averments regarding existence of road, its usage or alleged obstruction created by the petitioner does not find support from evidence on record. He would submit that respondent No.15 / Tahsildar as well as respondent No.16 / Collector failed to exercise their jurisdiction within four-corners of law and urged to quash and set aside the impugned order.

6. The learned Advocate Mr. A. A. Khande appearing for respondent Nos.1 to 6/contesting respondents would justify the impugned orders. He would submit that the existence of road and obstruction that has been created by the petitioner is specifically pleaded in the application submitted before respondent No.15 / Tahsildar under the Act. He would submit that the Authorities below have rightly relied upon the inspection report supported by panchnama drawn by Talathi and Circle Officer as per the direction of respondent No.15/Tahsildar. He would submit that the existence of customary road and obstruction created by the petitioner can be observed from the contents of report. He would urge to dismiss the petition since the concurrent findings of the fact are recorded by the Authorities below which need not be upset by this Court in exercise of justification under Article 227 of the Constitution of India.

7. Having considered the submissions advanced by the learned Advocates appearing for the respective parties and after perusal of record, it can be observed that respondent Nos.1 to 6 are the owners of land Gat No.193 and 183 situated at village Aasadi, Taluka Sillod. The jurisdiction of the Mamlatdar under Section 5 of the Act has been invoked by them contending that they had customary approach road passing from Gat No.189 owned by the petitioner. According to them, the petitioner diverted rainwater to pass through the road, therefore, the road has been vanished.

According to them, the petitioner had obstructed the use of way on 06/06/2020. Hence, they approached the Police Authorities who registered N.C. No.348/2020. The record shows that the petitioner has filed Regular Civil Suit No.113/2020 before the Civil Judge, Junior Division, Sillod seeking the relief of perpetual injunction against the contesting respondents.

8. The judgment and order passed by respondent No.15 / Tahsildar shows that he relied on the joint report submitted by Talathi and Circle Officer coupled with panchanama dated 23/06/2020. The panchnama depicts that existence of customary road from Gat No.189 could not be confirmed, even particulars of any obstruction created by the petitioner are not available. The joint report suggests that unless the measurement is caused by land record Authorities, conclusion regarding existence of way or pantas cannot be drawn.

9. Except these two documents, there is nothing on record, on the basis of which, the conclusion can be drawn regarding existence of customary road passing through Gat No.189 for usage of the owners from Gat Nos.193, 190 of 183. Consequently, the finding recorded by respondent No.15 / Tahsildar and confirmed by respondent No.16 / Collector in appeal appears to be unsustainable for want of supporting evidence. A perusal of proceeding before respondent No.15 / Tahsildar would show that even the statements of witnesses are not recorded. The report of TILR as suggested in joint report is not obtained. No further attempts are made to bring on record the factual aspects regarding existence of customary road and alleged obstruction by the petitioner. In that view of the matter, this Court holds that the Mamlatdar as well as Appellate Authority failed to exercise jurisdiction in judicious manner while passing the impugned orders.

10. The learned Advocate Mr. A. A. Khande appearing for respondent Nos.1 to 6 at this stage submits that if this Court concludes that the evidence

on record is insufficient, respondent Nos.1 to 6 may be granted an opportunity to lead such evidence. Considering the nature of dispute, it would be just and proper to grant such opportunity with a view to set at rest the controversy. In that case, Mamlatdar may also take requisite steps to obtain report from TILR to find out existence of way that would facilitate just and proper decision. Hence, the following order:

ORDER

- (i) The writ petition is partly allowed.
- (ii) The order dated 04/09/2020 passed by respondent No.15/Tahsildar, Sillod, in Proceeding No.2020/ROR/CR-09/2020 as well as the order dated 29/11/2021, passed by respondent No.16/Deputy Collector (EGS), Aurangabad, in Proceeding No. 2021/Mamlatdar/Revision/CR-12 are quashed and set aside.
- (iii) The matter is remanded back to Tahsildar, Sillod/Mamlatdar Court in file No. 2020/ROR/CR-09/2020 with further directions to decide claim in Proceeding No.2020/ROR/CR-09/202 afresh within a period of (03) three months from the date of receipt of this order.
- (iv) The parties shall be at liberty to lead additional evidence, if any.
- (v) The writ petition is disposed of accordingly.
- (vi) In view of disposal of writ petition, pending civil application is also disposed of.

(S. G. CHAPALGAONKAR, J.)