



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5104 OF 2025

1. Giridhar Jagdevrao Suryawanshi
2. Sachin Giridhar Suryawanshi
3. Namdev Giridhar Suryawanshi
4. Laxmibai Giridhar Suryawanshi ... PETITIONERS

VERSUS

1. The State of Maharashtra
through The Secretary of Revenue
and forest Department,
Mantralaya, Mumbai.
2. The Tahsildar and Mamlatdar,
Himayatnagar, Dist. Nanded
3. Ramesh S/o. Sheshrao Suryawanshi,
4. Surekha Sheshrao Suryawanshi,
5. Kailash Nanarao Suryawanshi,
6. Anand Bhaurao Suryawanshi,
7. Kishan Shriram Suryawanshi,
8. Ashabai Sambhaji Suryawanshi
9. Rekhabai Mahesh Suryawanshi ... RESPONDENTS

...

Advocate for the Petitioners : Mr. Suraj R. Bagal
AGP for Respondents No.1 and 2 : Mr. PK. Lakhotiya
Advocate for Respondents No.3 to 9 : Mr. S.N. Janakwade

...

CORAM : ABASAHEB D. SHINDE, J.

Reserved on : 25.11.2025

Pronounced on : 17.12.2025

JUDGMENT (ABASAHEB D. SHINDE, J.) :

1. Heard. Rule. Rule is made returnable forthwith. With the consent of the parties the matter is heard finally at the stage of admission.

2. By the present writ petition under Article 227 of the Constitution of India, the petitioners are taking exception to the order dated 25.11.2024 passed by learned Tahsildar, Himayatnagar, District Nanded bearing Outward No.2024/JAMA-1/Rasta Case/CR, thereby, directing the petitioners to remove an obstruction on the disputed road under Section 5(2) of the Mamlatdar's Court Act, 1906 (herein after the Act of 1906) as well as the order dated 01.04.2025 passed by the learned Sub-Divisional Officer, Aadgaon in file No.2024 / Revision / Dudhad / Himayatnagar/CR-66, by which the revision filed by the petitioners against the order passed by the learned Tahsildar came to be dismissed.

3. Learned counsel for the petitioners has advanced the following submissions :

- i. The petitioners are the owners of land Gut No.136, 137, 138 and 238, whereas, the respondents No.3 to 9 are owners of Gut Nos.239, 240, 244, 135 and some portion of Gat No.136 situated at village, Dudhad, Taluka Himayatnagar, District Nanded.
- ii. In the year 2019 when similar proceedings under the Act of 1906 were filed by the respondents No.3 to 9, in that proceeding it was decided that 5 feet each from the lands of petitioners and the respondents No.3 to 9 would be utilized for the purpose of approach road making it total of 10 feet.
- iii. Despite having agreed in the proceeding of 2019 that 5 feet

each lands belonging to the petitioners and the respondents were to be utilized for making total 10 feet road, the respondents No.3 to 9 filed the present proceeding in 2024 which is not maintainable more so when the respondent no. 3 to 9 have an alternate road.

- iv. Initially the respondents No.3 to 9 have filed a simple application before the learned Tahsildar on 12.06.2024, however, later on the Tahsildar entertained the subsequent filing of plaint which was not initially filed and thus filing of subsequent copy of plaint itself is contrary to the provisions of Section 7 to 10 of the Act of 1906.
- v. The proceeding in the nature of suit filed by the respondents No.3 to 9 was barred by Section 26(2) of the Act of 1906.
- vi. The learned Tahsildar decided the proceedings filed by respondents No.3 to 9 on the basis of the so called Panchanama which is impermissible as the proceeding under Section 5(2) of the Act of 1906 needs to be decided like a suit filed in a civil court.
- vii. It is also contended that considering the scheme of the Act of 1906, the proceedings need to be decided like a suit filed in a civil court by permitting the parties to lead the oral evidence by allowing the parties to cross-examine the witnesses and this exactly what is missing in the present proceeding and therefore

the Tahsildar should not have decided the matter without permitting the petitioners to cross-examine the witnesses. The Sub-Divisional Officer committed an error in confirming the order passed by the Tahsildar mechanically, without application of mind.

viii. To buttress his submission the learned counsel for the petitioners relied on the following judgments :

- i. **Sudhir Yashwant Dhangade Vs. Ankush Kashiram Bole and Ors.; 2019 (1) ALL MR 825.**
- ii. **Ajay Nandkishor Bhailume and Ors. Vs. The Sub-Divisional Officer and Ors.; (WP No.7606/2020 passed on 08.02.2021).**
- iii. **Sanjay Keshav Bhoite and Ors. Vs. The Collector, Ahmednagar and Ors.; (WP No.6640/2022 passed on 29.06.2022).**
- iv. **Tarabai Ravsaheb Chaudhari and Ors. Vs. The State of Maharashtra and Ors.; (WP No.6074/2018 with connected civil applications, passed on 05.07.2022).**
- v. **Anusaya Shivaji Fattepure and Ors. Vs. Raosaheb Anandrao Ingale and Ors.; (WP No.11136/2021 passed on 03.01.2024).**

4. Per contra, the learned counsel for the respondents No.3 to 9 advanced his submission as follows :

- i. Though in the proceeding initiated in the year 2019, a road of 10 feet was agreed to be used for approaching the agricultural land of the respondents No.3 to 9, however, the petitioners again created obstruction and therefore the respondents No.3 to 9 were constrained to file present proceedings in 2024.
- ii. As far as the earlier application filed on 12.06.2024 by the

respondents No.3 to 9 before the Tahsildar is concerned, the Tahsildar after having found that the respondents No.3 to 9 have cause of action in filing the application, permitted the respondents No.3 to 9 to file proper application in the nature of plaint which is in accordance with law.

- iii. The proceedings filed by the respondents No.3 to 9 cannot be said to be barred by Section 26(2) as the said bar operates in respect of filing of the suit and not the proceedings under Section 5(2) of the Act of 1906.
- iv. Regarding contention that the proceedings under Section 5(2) of the Act of 1906 cannot be decided merely on the basis of Panchanama is concerned, it is submitted that when the Panchanama on the basis of which the learned Tahsildar has arrived at a conclusion of obstruction created by the petitioners, the petitioners were present and have signed on the said Panchanama. The Panchanama also shows that the respondents no. 3 to 9 do not have alternate road.
- v. So far as the contention that the petitioners were not permitted to cross-examine the witnesses is concerned, the proceedings under Section 5(2) being summary in nature and the fact that the petitioners have not availed opportunity of making an application to cross-examine, precludes the petitioners from raising the said ground. To substantiate the submissions, the

learned counsel for the respondents relied on the following judgments:

- i. **Vishwanath Rambhaji Bhalerao and Anr. Vs. Usha Pralhad Kasbe ; 2011 (1) AIR Bom R 376.**
- ii. **Shriram Abhiman Nafade and Ors. Vs. The State of Maharashtra and Ors. (WP No.3923/2021 passed on 14.07.2021).**
- iii. **Gangadhar Vs. Kiran Chandrakant Bhapkar and Ors.; 2022 DGLS (Bom.) 647**
- iv. **Madan Shenphad Ghayvat and Ors. Vs. Sub-Divisional Officer and Ors.; 2023 DGLS (Bom.) 4589.**
- v. **Vikram Madhavrao Shinde and Anr. Vs. The Sub-Divisional Officer, Hadgaon and Ors.; (WP No.13029/2025 passed on 03.11.2025).**
- vi. **Rajeshwar Murlidhar Salgaonkar Vs. Bhaskar Babarao Gadhave ; (WP No.9994/2025 passed on 16.09.2025).**

5. Having considered the submissions advanced and the judgments relied upon by the learned counsel for the petitioners as well as the respondents No.3 to 9 and after going through the documents annexed with the writ petition and the affidavit-in-reply, so also the order impugned, following points arises for consideration :

- I. Whether the orders impugned are legal and proper.
- II. Whether any interference is called for in the impugned orders.

6. Before advertng to the submissions advanced by the learned counsel for the petitioners as well as learned counsel for the respondents it would be apt to consider the scheme of Section 7 to 10 of the Act of 1906 which reads as under :

Section 7. Suits commenced by plaintiff. Contents of plaintiff :

All suits under this Act shall be commenced by a plaintiff, which shall be presented to the Mamlatdar in open Court by the plaintiff, and which shall contain the following particulars : —

- (a) the name, age, religion, caste, profession, and place of abode of the plaintiff;
- (b) the name, age, religion, caste, profession and place of abode of the defendant;
- (bb) the nature and situation of the impediment erected and the situation of the lands which are adjacent to each other and the nature of the relief sought;
- (c) the nature and situation of the property of which possession for use is sought, or the nature of the injunction to be granted, as the case may be;
- (d) the date on which the cause of action arose;
- (e) the circumstances out of which the cause of action arose; and
- (f) a list of the plaintiff's documents, if any, and of his witnesses, if any, showing what evidence is required from each witness, and whether such witnesses are to be summoned to attend, or whether the plaintiff will produce them on the day and at the place to be fixed under Section 14.

Section 8. Informal petitions to be treated as plaintiffs :

Where a petition not in the form of a plaintiff is presented to the Mamlatdar and the subject matter thereof appears to fall within the scope of section 5, the Mamlatdar shall explain to the person presenting the petition the nature of the reliefs afforded by this Act and shall inquire whether the petitioner desires to obtain relief thereby. If the petitioner expresses a desire so to obtain relief, the Mamlatdar shall endorse the desire on the petition which shall thereupon be deemed to be a plaintiff presented under section 7.

Section 9. Examination of Plaintiff on oath :

Where the plaint does not contain the particulars specified in section 7 or is unnecessarily prolix, the Mamlatdar shall forthwith examine the plaintiff upon oath and ascertain from him such of the particulars specified in section 7 as are not clearly and correctly stated in the plaint, and shall reduce the examination to writing in the form of an endorsement on or annexure to the plaint which shall thereupon be deemed to be part of the plaint. Where the plaintiff requires time to obtain any of the particulars specified in section 7, the Mamlatdar shall grant him such time as may under all the circumstances appear reasonable.

Section 10. Plaint to be subscribed and verified :

When the plaint is presented, and has, if necessary, been treated in the manner specified in section 9, the Mamlatdar shall require the plaintiff to subscribe and verify the plaint in his presence, in open Court, in the manner following, or to the like effect: "I, A. B., the plaintiff, do declare that what is stated in this plaint is true to the best of my information and belief."

7. From the scheme of Sections 7 to 10 Act of the 1906, it is clear that the Mamlatdar is supposed to treat an application filed before it as a pleading and ascertain as to whether it is necessary to decide the said application in accordance with provisions of Act of 1906. In the present case, the learned Tahsildar after finding that there is a cause of action for the respondents No.3 to 9 in making an application under Section 5(2) of the Act of 1906 have allowed the respondents No.3 to 9

to file an application as per Section 7 and 8 of the Act of 1906. The applications and the plaint filed by the respondents No.3 to 9 shows cause of action to file the same as the petitioners have caused obstruction on the disputed road.

8. I find that proceedings before the Tahsildar under the Act of 1906 are summary in nature where the Tahsildar is supposed to ascertain from the pleadings filed by both the parties and also after carrying out the Panchanama, as to whether there is any obstruction created on the disputed road. In the present case when the Panchanama was carried out, both the petitioners as well as the respondents No.3 to 9 were present along with other persons and all of them have signed on the Panchanama and, therefore, the petitioners cannot be allowed to raise any grievance about the Panchanama.

9. As observed earlier, the proceedings under the Act of 1906 being summary in nature, any order passed is subject to the order passed by the competent civil court and in the present case admittedly, the petitioners themselves have filed Regular Civil Suit No.111/2024 before Civil Judge, Junior Division, Himayatnagar, against the respondents No.3 to 9 thereby

seeking perpetual injunction that the respondents are not entitled to use the disputed road and that the respondents No.3 to 9 shall not cause obstruction in respect of the disputed road. Considering the fact that the petitioners have already filed Regular Civil Suit No.111/2024 for perpetual injunction against the respondents No.3 to 9, even if the orders passed by the Tahsildar and the Sub-Divisional Officer, are allowed to sustain, the same would be subject to outcome of the Regular Civil Suit No.111/2024.

10. I have perused the impugned orders passed by the learned Tahsildar as well as Sub-Divisional Officer and after going through the impugned orders, I hold that the findings arrived at by both the authorities are based on the spot inspection, the panchnama drawn as well as concurrent appreciation of evidence and, therefore, I do not find any reason to interfere with the orders passed by both the Tahsildar as well as the Sub-Divisional Officer. As far as the judgments relied upon by the petitioners are concerned as observed above, since the proceeding under the Act of 1906 are summary in nature and always subject to the orders passed by the competent civil court

as contemplated under Section 22 of the Act of 1906 and more particularly when the Regular Civil Suit No.111/2024 is already pending between the same parties, the orders passed impugned would be subject to the outcome of the decision of the said civil suit.

11. In that view of the matter, I do not find any reason to interfere with the impugned orders as those are based on the evidence available on record and this Court under Article 227 of the Constitution of India cannot interfere with the concurrent finding of facts, therefore the writ petition deserves to be dismissed. The writ petition stands dismissed. Rule is discharged.

(ABASAHEB D. SHINDE, J.)