



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

**WRIT PETITION NO. 9544 OF 2024
WITH CA/6369/2025 IN WP/9544/2024**

VITTHAL SARJERAO SADARE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS SECRETARY
AND OTHERS

...
Advocate for Petitioners : Mr. S. S. Thombre along with
Mr. S. S. Patunkar instructed by J. P. Legal Associates
AGP for Respondents No.1, 2 and 15 : Mr. V. S. Badhakh
Advocate for Respondents No.3 to 27 : Mr. N. N. Bhagwat
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CORAM : ROHIT W. JOSHI, J.

DATE : 11-08-2025

PER COURT:-

1. Present petition takes exception to the order dated 19.08.2024 passed by the learned Sub-Divisional Officer, Chhatrapati Sambhajinagar rejecting revision application preferred under Section 23(2) of the Mamlatdars' Courts Act, 1906 (for short, "the Act"), thereby confirming the order passed by the learned Tahsildar, Aurangabad acting as "Mamlatdar" under Section 5(2) of the Act.

2. The dispute between the petitioners and respondents No.3 to 48 pertains to the subject road. It is contention of the petitioners that subject road is a private road constructed by them for their personal use in the agricultural land belonging to them.

3. The contention of the learned Advocate for the petitioners is that this road does not find mention in any land record or even Government maps and, therefore, learned Tahsildar, so also the learned Sub-Divisional Officer ought to have held that road is a private road. He refers to the panchnama dated 15.11.2022 which records that the reference to the said road is also not found in the village map.

4. This Court has taken a view in the judgment passed in Writ Petition No.5074 of 2022 (*Vimal W/o. Bhausahab Nabde vs. The Sub Divisional Officer, Ahmednagar and others*) and connected petitions, dated 04.08.2025, that the disputes under the Act are essentially involve vexed issue of facts which the Civil Court is better equipped to adjudicate.

5. Mr. Thombre, learned Advocate distinguishes the judgment by contending that the facts involved in the present case are altogether different and on reading of the orders and the material relied upon by the authorities while passing the impugned order, it can clearly be seen that the petitioners did not block or create obstruction over any preexisting public road and therefore, it is apparent on the face of the record that the learned Mamlatdar has passed the impugned order exceeding the jurisdiction conferred on him under Section 5(2) of the Act. He argues that Mamlatdar cannot direct removal of obstruction over road which is a private road of the person who has caused obstruction.

6. Perusal of report dated 26.06.2014 forwarded by the Revenue Circle Officer to the Tahsildar with respect to subject road indicates that earth work with respect to the said road was done with public contribution. Learned Tahsildar has observed in the order that the petitioners had agreed before the villagers that they will not create any obstruction on the road.

7. Mr. Thombre, learned Advocate would contend that the observations in the order that the petitioner had given no objection for use of the road is incorrect. He contends that the panchanama specifically shows that the petitioners had raised objection.

8. The facts of the case will demonstrate that a finding is recorded that the road in question was constructed from public contribution. The contention of the petitioners is that the road is passing through his agricultural land. As against this, it is held that the road passes over *bandh/dhura* i.e. the boundary of two fields. This essentially is a disputed question of fact. The dispute as to whether the road passes over the boundary or through the land of the petitioners or alongside the boundary will also require evidence and mainly the evidence of Cadastral Surveyor for joint measurement of adjoining agricultural lands and the road. Need to appoint the Court Commissioner may also arise. Whether the road is constructed from public funds or not, is also a question of

fact. Such disputed questions of law will be better left for the Civil Court to decide.

9. As is held in the matter of **Vimal Bhausaheb Nabde (supra)**, the Civil Court also has the jurisdiction to decide question, which a Mamlatdar is competent to adjudicate under the provisions of the Act. The adjudication by Civil Court prevails over adjudication of the authorities under the Act. It will be, therefore, appropriate that the petitioners are relegated to the remedy of filing Civil Suit, which is a more efficacious remedy, as is held in the matter of **Vimal Bhausaheb Nabde (supra)**. This Court sees no reason to take a different view of the matter, in as much as, the adjudication of petition will involve adjudication of certain disputed questions of facts.

10. In view of the above, it will be appropriate to dispose of the petition with liberty to the petitioners to assail the impugned order by filing a civil suit. Even if the impugned orders are not challenged, the same will cease to operate if the controversy forming subject matter before the authorities is finally decided by Civil Court in favour of petitioners.

11. There is *interim* order passed in the present petition on 04.09.2024 directing the parties to maintain *status quo* and further directing that no any work be carried out on the subject road, the same shall operate till 15.09.2025.

12. The suit filed, if any, be decided on its own merits without being influenced by the order impugned in the petition so also the observations made in the present order. It is clarified that findings above are only for the purpose of dealing with contentions pertaining to alternate remedy and not for deciding the controversy on merits.

13. Needless to mention, the issue of jurisdiction of Mamlatdar's Court is also kept open since that principal objection is raised by the learned counsel for the petitioners.

14. Writ Petition is disposed off with liberty to the petitioners as aforesaid. Pending Civil Applications, if any, are disposed off.

[ROHIT W. JOSHI, J.]

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