



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8536 OF 2024

Rashid Ajij Khan Pathan
VERSUS
Munshi Khan Muneer Khan Pathan And Others

WITH
WRIT PETITION NO. 7066 OF 2025 WITH
CIVIL APPLICATION NO. 6384 OF 2025
IN WP/7066/2025 WITH
CIVIL APPLICATION NO. 7994 OF 2025
IN WP/7066/2025

Rashidkha Ajijkha Pathan
VERSUS
Kalimabee Munirkha Pathan And Others

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Mr. S. S. Patnunkar i/by J. P. Legal Associates For
Petitioner, Advocate for the Petitioner
Mr. V. S. Lohade, Advocate for Respondent No. 1
Mr. A. S. Kulkarni, Advocate for Respondent Nos.2 & 3
Mr. N. K. Chaudhari, Advocate for Respondent No. 4 in
WP/7066/2025
Mrs. M. L. Sangit, AGP for Respondents/State

CORAM : R. M. JOSHI, J
DATE : SEPTEMBER 15, 2025

COMMON ORDER :

1. These Petitions take exception to the order dated 26.06.2024 passed in Misc. Civil Appeal No. 26/2024 setting aside the judgment and order dated 26.01.2024 passed in RCS No. 303/2023.

2. From the perusal of the facts on record it appears that the contesting Respondent had filed proceedings under Section 5 of the Mamlatdar's Courts Act, 1905 (for short '**the Act**') claiming obstruction at the hands of the Petitioner as well as Respondent No. 4 in respect of customary foot way available for him to proceed from the lands of the Petitioner and Respondent No. 4.

3. The spot panchnama as well as village map indicates that there exists a foot way from Gut Nos. 787, 790 and 792. Tahsildar accepted the case of the contesting Respondent that obstruction was caused to the customary way, however, has proceeded to direct the creation of 8.15 ft. wide way from the land of the Petitioner. Petitioner has taken exception to the said order by filing revision. Similarly, he filed suit being RCS No. 303/2023 wherein the Trial Court has granted injunction against the Defendant i.e., contesting Respondent herein. Since this order came to be set aside by Appellate Court, present Petition is filed.

4. There is no dispute about the fact that the

proceedings filed by contesting Respondent under Section 5 of the Act can be restricted only to the extent of obstruction, if any, caused to the customary way available to the contesting Respondent and removal of obstruction. There is no jurisdiction for the Tahsildar to create any way. Record indicates that there was a foot way from the concerned gut numbers as mentioned herein above. Spot inspection report/panchnama as well as the village map confirms the said fact. In spite of this, Tahsildar has passed order directing creation of 8.15 ft. wide road. This is wholly beyond the jurisdiction of the Tahsildar while exercising powers under Section 5 of the Act.

5. At this stage, learned Counsel for contesting Respondent makes statement, on instructions from the Respondent who is present in the Court, that the order of Tahsildar shall be construed & followed only to the extent of removal of obstruction from foot way and not the way directed to be created, which is 8.15 ft. in width.

6. Learned Counsel for the Petitioner, on instructions, makes statement that Petitioner would not obstruct the use of foot way by the contesting

Respondent in any manner whatsoever.

7. In view of the above clarification, nothing survives for this Court to decide in the present Petitions. Hence, Petitions stand disposed of.

8. Needless to say that suit filed by the Petitioner shall be decided on its own merit and obviously in view of the provisions of the Act, such adjudication done by the Civil Court will prevail upon the orders passed by the Tahsildar.

9. Learned Counsel for Respondent No. 4 makes statement that there is no relief granted against Respondent No.4 and as such, no direction can be issued in this regard against him.

10. Since there was no relief granted against Respondent No. 4 and non grant of relief against him has not been taken exception to, this Court does not wish to enter upon any dispute between Respondent No. 4 and any other party.

11. Disposal of the Petitions shall not come in way of the parties to adopt appropriate remedies as

provided in law.

12. Pending civil application(s), if any, stands disposed of.

(R. M. JOSHI, J.)