

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

918 WRIT PETITION NO. 8474 OF 2024



1. Jagannath Manaji Maindad
Age : 80 years, Occu : aGRI
2. Popat Manaji Maindad
Died.
3. Sunil Gorakh maindad
Age : 37 years, Occu : Agri.,
4. Dnyaneshwar Jagannath Maindad
Age : 45 years, Occu. : Agri.,
5. Shankar Popat Maindad
Age : 27 years, Occu.: Agri.,
6. Dwarkabai Gorakh Maindad
Age : 65 years, Occu.: Agri.,

All R/o.:Bhoyegaon, Ta. Gangapur,
Dist. Aurangabad

...Petitioner

VERSUS

1. The State Of Maharashtra,
Through The Department of Revenue And Forest,
Mantralaya Mumbai.
2. The Sub-Divisional Office, Vaijapur,
Ta. Vaijapur Dist. Aurangabad
3. The Tahsildar, Gangapur,
Ta. Gangapur, Dist. Aurangabad
4. Savita Jagannath Pathe
Age : 40 years, Occu : Household,
5. Jagannath Ganpat Pathe
Age : 50 years, Occu : Agri.,
6. Ganpat Bhaurao Pathe
Died

7. Babasaheb Ganpat Pathe
Age : 50 years, Occu : Agri.,
8. Appasaheb Kachru Pathe
Died, Through Legal Heirs,
R.No.4 to 8 R/o: Bhoyegaon, Ta. Gangapur,
Dist. Aurangabad. ...Respondents

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Mr. Keshav F. Shingare, Advocate for the Petitioners
Mr. N. D. Raje, AGP for Respondents/Sate
Mr. Vinod I. Thole, Advocate for Respondent Nos. 4, 5 & 7

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CORAM : ROHIT W. JOSHI, J.

DATED : 9th JULY 2025

ORAL JUDGMENT :-

1. The present petitioner had filed an application under Section 5 of the Mamlatdar's Courts Act, 1906 *inter alia* seeking removal of obstruction on the suit road. The said application was allowed by the learned Mamlatdar vide order dated 18.05.2022.

2. The respondent nos.4 to 7 challenged the said order by preferring a revision as contemplated under Section 23(2) of the Act. The said revision came to be partly allowed vide 19.03.2024 passed by the learned Sub Divisional Officer, Vaijapur. The learned Sub Divisional Officer, Vaijapur has quashed and set aside order dated 18.05.2022 passed by the learned Mamlatdar and has remanded the matter to the learned Mamlatdar for holding fresh enquiry in the matter. The learned Sub Divisional Officer, Vaijapur has observed that it is necessary to determine as to whether there was a pre-existing

road on which obstruction was created by the respondents. Apart from this, the learned Sub-Divisional Officer, Vaijapur has also observed that it is necessary to determine as to whether there is any alternate approach road available to be used by the plaintiffs. As regards the first observation with respect to existence of a road, no fault can be found with the reason recorded by the Sub Divisional Officer, Vaijapur, however, the second observation regarding need to recognize as to whether any alternate road is available or not, the said direction cannot be sustained. Even if a pre-existing road is in existence, no one has a right to obstruct the same, save and except, in accordance with law. No one can unilaterally create obstructions by pre-existing road only on the ground that the persons using the road have some alternate way. Section 5 of the Mamlatdar's Courts Act does not state that obstruction on a road cannot be removed if there is any alternate road available. The said finding by the learned Sub-Divisional Officer, Vaijapur is therefore not in accordance with law. The order dated 19.03.2024 is maintained. However, the learned Mamlatdar is directed to determine the issue as to whether the road claimed by the original plaintiffs was a pre-existing road and whether any obstruction is created on the said road within the stipulated period of limitation. Existence of any alternate road will not be a relevant consideration for adjudication of the application afresh.

3. The writ petition is **partly allowed**. The order dated 19.03.2024

is maintained, however existence of alternate road will not be a ground to reject the application for removal of encroachment.

4. Respondent nos.3 Tahsildar has filed reply in the matter wherein it is stated that the obstruction on the road is already removed and the road is fit for being used as a cartway. The said statement which is made in paragraph 9 of the reply affidavit is supported by a panchanama dated 17.08.2022 (filed at exhibit-13). In view of the aforesaid, till the proceeding is determined by the Mamlatdar afresh *status-quo* as on today shall prevail and people will be entitled to use subject road as cartway, subject to final order to be passed by the learned Mamlatdar.

5. The learned counsel for the respondent nos.4 to 8 makes a submission that the respondents have filed their reply opposing the application filed before the learned Mamlatdar. He however states that order passed by the learned Mamlatdar records that reply is not filed. The reply filed by the respondents will be taken into consideration by the learned Mamlatdar while deciding the application. In the event, copy of the said reply is not found on the record respondents may place copy of the said additional reply.

6. Writ Petition is disposed of accordingly.

[ROHIT W. JOSHI, J.]