



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

WRIT PETITION NO.12664 OF 2025

- 1] Nivrutti Maruti Pacharne,
Age: 44 years, Occu : Agri,
R/o : Pokhari, Tq. Jafrabad Dist. Jalna.
- 2] Kaduba Baburao Borude,
Age: 65 years, Occu : Agri,
R/o : Pokhari, Tq. Jafrabad Dist. Jalna.
- 3] Parvati Kaduba Borude,
Age: 60 years, Occu : Agri,
R/o : Pokhari, Tq. Jafrabad Dist. Jalna.

.. PETITIONERS

VERSUS

- 1] The Sub-Divisional Officer,
Bhokardan, Jalna,
Dist. Jalna.
- 2] The Tehsildar [Mamlatdar] Jafrabad,
Tq. Jafrabad, Dist. Jalna.
- 3] Krushna Narayan Pacharne,
Age-Major, Occu. Agri.
R/o. Pokhari, Tq. Jafrabad, Dist. Jalna.
- 4] Datta Kautikrao Pacharne,
Age-Major, Occu. Agri
R/o : Pokhari, Tq. Jafrabad Dist. Jalna.
- 5] Rameshwar Bapurao Pacharne,
Age-Major, Occu. Agri
R/o : Pokhari, Tq. Jafrabad Dist. Jalna.
- 6] Noorbi Sabadarshah,
Age-Major, Occu. Agri

R/o : Pokhari, Tq. Jafrabad Dist. Jalna.

- 7] Mahadu Maroti Pacharne,
Age-Major, Occu. Agri
R/o : Pokhari, Tq. Jafrabad Dist. Jalna
- 8] Krushna Narayan Nikas,
Age-Major, Occu. Agri
R/o : Pokhari, Tq. Jafrabad Dist. Jalna.
- 9] Ankush Haribhau Nika,
Age-Major, Occu. Agri
R/o : Pokhari, Tq. Jafrabad Dist. Jalna.
- 10] Raghunath Nehaji Nikam,
Age-Major, Occu. Agri
R/o : Pokhari, Tq. Jafrabad Dist. Jalna.
- 11] Shivaji Sukhdeo Nikam,
Age-Major, Occu. Agri
R/o : Pokhari, Tq. Jafrabad Dist. Jalna.
- 12] Tejrao Baburao Borude,
Age-Major, Occu. Agri
R/o : Pokhari, Tq. Jafrabad Dist. Jalna.

.. RESPONDENTS

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Mr.A.D.Khedkar, Advocate for the petitioners.

Mr.P.D.Patil, AGP for the respondent-State.

Mr.Vivek Patil, Advocate h/f. Mr.A.M.Salok, Advocate for the respondent nos.3 to 5 and 7.

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CORAM : ARUN R. PEDNEKER, J.

DATE : 14.11.2025

ORDER :

1] By the present Writ Petition, the petitioners challenge concurrent orders passed by the authorities under the Mamlatdars' Courts Act, allowing the application filed by the respondents under Section 5 of the Mamlatdars' Courts Act, for removal of obstruction and opening up the obstructed road by the petitioners.

2] The learned counsel for the petitioners submits that the respondents–villagers have filed an application before the Tahsildar, Jafrabad under Section 5 of the Mamlatdars' Courts Act, 1906, seeking removal of obstruction from the road, as mentioned by them, in the application, contending that there is long standing road from Gat Nos.151 and 152 for going towards the lands Gat Nos.134, 135, 136, 133, 128, 131 and 127 and the said road has been obstructed by the owners of the Gat Nos.151 and 152 and that the said road may be opened up. After considering the panchanama and the material on record, by order dated 14.10.2024, the Tahsildar–Mamlatdar, Jafrabad

directed to open up the road from Gat Nos.151 and 152 to the Gat Nos.134, 135, 136, 133, 128, 131 and 127. Thereafter, the petitioners challenged the said order before the Sub-Divisional Officer by filing Revision and the same was also dismissed by order dated 12.09.2025. The learned counsel for the petitioners submits that the petitioners challenged the order passed by the Mamlatdar, contending that the procedure as contemplated under Section 7 and 8 of the Mamlatdars' Courts Act has not been followed and the proceedings before the Mamlatdars are in the nature of suit. It is further submitted that the applicant no.5 had specifically filed an affidavit stating that he has not moved an application under Section 5 of the Mamlatdars' Courts Act and his name is falsely included in the application. It is submitted that there is no proper cause of action noted in the application. It is further submitted that the respondents filed application for opening up the road, which is not in existence.

3] On perusal of the orders passed by the

Tahsildar-Mamlatdar, so also, by the Sub-Divisional Officer, it can be seen that the Circle Officer and Talathi had conducted panchanama and it was found that there is road in existence and the same is obstructed by the petitioners. Considering the panchnama, the directions are given by the Mamlatdar to remove obstruction from the existing road and the same is upheld by the Revisional Authority.

4] The road is stated to be on common embankment [common bandh] of the field and the obstructions is on the common embankment [common bandh] of the field, which was in use. The proceedings conducted before the Mamlatdar are summary in nature and the objections are required to be taken up at the first time. There is a duty cast on the Mamlatdar to ensure that if the application under Section 5 is defective, the same shall be rectified by the Mamlatdar. However, the proceedings are summary in nature and the objections are not raised at the earliest. On inspection it is found that the petitioners have obstructed passage of common embankment [common bandh]. The proceedings are summary in nature and the

findings recorded by the authorities below are subject to any orders passed by the Civil Court and in view of Section 22 of the Mamlatdars Courts Act, any order passed by the Civil Court would override the orders passed by the authorities under the Mamlatdars' Courts Act. Thus, this Court would not entertain the Writ Petition against the concurrent findings rendered by the authorities under the Mamlatdars' Courts Act. However, the petitioners can file appropriate civil suit, seeking injunction and any other relief in terms of Section 22 of the Mamlatdars' Courts Act. The petitioners can also be granted compensation by the Civil Court for wrongful grant of the road by the authorities under the Mamlatdars' Courts Act. The authorities constituted under the Mamlatdars' Courts Act shall not implement the impugned orders, if already not implemented, for the period of three weeks from today so as to enable to the petitioners to approach the civil Court. However, it is clarified that the directions are not given on merits and are made only to enable the petitioners to approach the Civil Court.

5] In the event, such civil proceeding is filed before the civil court qua the subject matter, the Civil Court to decide the same, on its own merits, without being influenced by the observations made by this Court or by the authorities constituted under the Mamlatdars' Courts Act.

6] I have not issued notice to other side as it would consume further time. Liberty is reserved to the respondents to approach this Court for recall of this order if they are aggrieved.

7] With the above observations, the Writ Petition is disposed of.

[ARUN R. PEDNEKER]
JUDGE

DDC