



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

WRIT PETITION NO. 13664 OF 2023

**BALASAHEB LAXMAN AAWARI AND ANOTHER
VERSUS
PUSHPA PUNJIRAM AAWARI AND ANOTHER**

...
Mr. Ajinkya Reddy, Advocate for the Petitioners.
Mr. Vinod Y. Bhide, Advocate for Respondent No.1.
...

**CORAM : S. G. CHAPALGAONKAR, J.
DATED : 30th JULY, 2025.**

P.C.:-

1. The petitioners impugn order dated 13.01.2023 passed by Civil Judge Junior Division, Akole in Regular Civil Suit No.204/2022 as well as order dated 11.09.2023 passed by learned District Judge, Ahmednagar in Miscellaneous Civil Appeal No.04/2023.

2. The petitioners are original plaintiffs in Regular Civil Suit No.204/2022. The suit is filed seeking declaration that order dated 27.09.2022 passed by learned Tahsildar in Rasta Case No.14/2021 under Mamlatdar's Courts Act is illegal and perpetual injunction against defendant no.1 from using road created under order of Mamlatdar. The petitioners have also filed application below Exhibit-5 seeking temporary injunction against defendant no.1. The Trial Court on consideration of rival contentions refused to grant temporary injunction. The learned District Judge dismissed

Appeal of petitioners upholding order passed by Trial Court.
Hence, this Writ Petition.

3. Mr. Reddy, learned Advocate appearing for petitioners invites attention of this Court to the Map depicting position of lands of defendants and plaintiffs. He would endeavour to impress upon Court that although there was no pre-existing road, it has been granted by Mamlatdar by erroneous exercise of jurisdiction under Section 5 of Mamlatdar's Courts Act and same has been implemented, thereby creating new access road in favour of defendant no.1. Mr. Reddy also invites attention of this Court to panchanama drawn during proceeding before Mamlatdar and submits that, in fact, existence of road could not be traced at the spot, but erroneous conclusions are drawn without reference to any authenticate evidence. He would, therefore, urge that Trial Court ought to have granted temporary injunction as prayed. The Appellate Court has also failed to appreciate aforesaid objection to the order of Mamlatdar and confirmed order of Trial Court.

4. Per contra, Mr. Bhide, learned Advocate appearing for respondents would submit that Competent Authority in exercise of jurisdiction under Section 5 of Mamlatdar's Court Act has passed just and proper order and same has been executed thereby removing obstruction made by defendants. At this stage,

contention of petitioners cannot be accepted and order passed by Mamlatdar cannot be nullified.

5. Having considered submissions advanced, it can be observed that defendants had approached Mamlatdar under Section 5 of Mamlatdar's Courts Act claiming access way from bandh of Survey Nos.305/2 and 305/4 to approach her land in Survey No.305/3. On, *prima facie*, consideration of material on record, it can be observed that small piece of land admeasuring about 18R is within ownership of defendant no.1. On Western side of her land there is water channel/Odha and practically there is no access way to reach road, which is passing from Eastern side of Survey Nos.305/1 and 305/4. The Tahsildar has approved existence of way, which runs West-East direction from common bandh of Survey Nos.305/2 and 305/4 owned by plaintiff nos.1 and 2. The Trial Court as well as Appellate Court relying upon contents of panchanama dated 11.06.2021 and 07.09.2022, *prima facie*, holds that Tahsildar was justified in granting road and accordingly rejected prayer of petitioners for grant of temporary injunction as claimed against defendant no.1.

6. Although Mr. Reddy, learned Advocate appearing for petitioners endeavours to point out discrepancies in panchanama dated 11.06.2021 and 07.09.2022, this Court cannot enter into

arena of factual dispute, which needs to be resolved at the time of trial. *Prima facie*, conclusions drawn by Courts appears to be in tune with legal and factual position. This Court would not re-appreciate entire material or enter into other factual aspects addressed on behalf of petitioners.

7. No jurisdictional error is pointed out requiring exercise under Article 227 of the Constitution of India. Hence, Writ Petition stands rejected.

(S. G. CHAPALGAONKAR)
JUDGE

Devendra/July-2025