



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

948 WRIT PETITION NO. 3239 OF 2024

NIRMALA HARIBHAU AUTADE AND OTHERS
VERSUS
ALKA BADRINATH INDAPURE AND OTHERS

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Advocate for the Petitioners : Mr. Pradip Narayanrao Sonpethkar, Mr.
D.A.Madake and Mr. A.B. Chalak

Advocate for Respondent Nos. 1 to 10 : Mr. T. S. Chavre Patil and
Mr.Y. K. Bobade

Advocate for Respondent Nos. 11 to 15 : Mr. B. P. Kakde, Mr. D. S.
Ugale and Mr. V. N. Shinde

AGP for Respondent Nos. 16, 17 and 18/State : Mr. V.S.Badakh

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CORAM : ROHIT W. JOSHI, J.

DATE : 14.08.2025.

PER COURT :

1. The present petition takes an exception to the order dated 26.12.2022 passed by the learned Mamlatdar, Paithan, whereby, an obstruction made on road passing through the boundary of the land owned by the petitioners and respondent Nos. 1 to 10 is ordered to be removed in exercise of powers conferred under Section 5 (2) of the Mamlatdars' Courts Act, 1906 and the order dated 06.11.2023, which is passed by the learned Sub Divisional Officer rejecting the Revision Application arising out of the said order.

2. This Court by its judgment in the matter of **Vimal w/o Bhausaheb Nabde Vs. The Sub Divisional Officer and Others, 2025**

DGLS, Bom. 2294 has held that the appropriate remedy for assailing the orders passed by the authorities under the Mamlatdars' Courts Act is a Civil Suit and in that view of the matter, it will be appropriate to relegate the parties to the Civil Court for adjudication of the dispute pertaining to the road between them. It will be pertinent to mention here that the petitioners have also filed a suit bearing Regular Civil Suit No. 238 of 2023 in relation to the road forming the subject matter of the present petition. In the civil suit, the petitioners have prayed that the defendants should not be allowed to construct any road through the agricultural lands of the petitioners.

3. In view of Section 26 of the Mamlatdars' Courts Act, a decree or even order passed by a Civil Court prevails over orders passed by authorities under the Mamlatdars' Courts Act. An order passed under the said Act operates only till order or decree to the contrary is passed by a Civil Court. Since the substantive Civil Suit with respect to controversy forming subject matter of proceedings in the present petition is pending, it will be appropriate to dispose of the petition directing the parties to work out their remedies in the pending Civil Suit i.e. Regular Civil Suit No.238/2023.

4. Pursuant to the order passed by the learned Mamlatdar,

followed by dismissal of Revision Application preferred by the petitioners, the obstruction on the said road was removed by the authorities on 28.03.2024. However, a day prior to that i.e. on 27.03.2024 an order of status-quo was passed by this Court. Learned Advocate for the petitioners contends that the authorities have executed the order although the order of this Court is communicated to them. On the other hand, learned AGP and the learned Advocates for the private respondents contend that a copy of the order was not produced by the petitioners and therefore, the order of Mamlatdar was executed. Learned AGP and learned Advocate for respondent Nos. 11 to 15 state that the authorities have now closed the subject road realizing the mistake committed, although, they contend that the said mistake was bonafide since a copy of the order was not produced for perusal while the obstruction was removed. The position prevailing today is that the road is not usable. It needs to be stated that the obstruction was removed on 28.03.2024. Thereafter, the road was being used for access by respondent nos.11 to 15. As per the report the road was being used even prior to 28.03.2024. The authorities have closed the road now on 13.08.2025.

5. In view of the aforesaid, it is directed that the road which is blocked on 13.08.2025 should be partially opened subject to further orders by the Civil Court. It is directed that the road should

be made accessible with width of 8 feet. approximately. As far as possible 4 feet wide road should pass through the lands of the petitioners and lands of respondent nos.1 to 10. It will be open for both parties to file appropriate applications for temporary injunction, including mandatory injunction with respect to use of the road before the learned trial Court.

6. It is reiterated that the provision for road, as above, shall operate only till appropriate orders are passed by the learned Civil Court and if no application is made seeking appropriate orders of temporary injunction, till adjudication of the suit on merits.

7. Writ Petition is disposed of in above terms.

(ROHIT W. JOSHI)
JUDGE

mahajansb/