



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

**WRIT PETITION NO.14966 OF 2025**

- 1] Shri Santosh Punjahari Khire,  
Age : 37 years, Occ. Agri,  
R/o. Chendufal, Tq. Vaijapur,  
Dist : Chhatrapati Sambhajinagar.
- 2] Shri Sanjay Punjahari Khire,  
Age : 42 years, Occ. Agri,  
R/o. Chendufal, Tq. Vaijapur,  
Dist : Chhatrapati Sambhajinagar.
- 3] Shri Dnyaneshwar Mahadu Pawar,  
Age : 52 years, Occ. Agri,  
R/o. Chendufal, Tq. Vaijapur,  
Dist : Chhatrapati Sambhajinagar. .. **PETITIONERS**

**VERSUS**

- 1] Shri Rajendra Vithal Pawar  
Age : 52 years, Occ. Agri,  
R/o. Shrirampur, Tq. Shrirampur,  
Dist. Ahilyanagar.
- 2] Shri Babasaheb Ashok Gahire,  
Age : 52 years, Occ. Agri,  
R/o. Chendufal, Tq. Vaijapur,  
Dist : Chhatrapati Sambhajinagar.
- 3] Shri Babasaheb Jagannath Lakare,  
Age : 57 years, Occ. Agri,  
R/o. Chendufal, Tq. Vaijapur,  
Dist : Chhatrapati Sambhajinagar.
- 4] Shri Annasaheb Lakshman Lakare,  
Age : 52 years, Occ. Agri,  
R/o. Chendufal, Tq. Vaijapur,

Dist : Chhatrapati Sambhajnagar.

- 5] Shri Pratap Jagannath Lakare,  
Age : 57 years, Occ. Agri,  
R/o. Chendufal, Tq. Vaijapur,  
Dist : Chhatrapati Sambhajnagar.
- 6] Shri Tatyasaheb Parsram Kale,  
Age : 67 years, Occ. Agri,  
R/o. Chendufal, Tq. Vaijapur,  
Dist : Chhatrapati Sambhajnagar.
- 7] Shri Devidas Tarachand Jagdale,  
Age : 52 years, Occ. Agri,  
R/o. Chendufal, Tq. Vaijapur,  
Dist : Chhatrapati Sambhajnagar.
- 8] Shri Mukund Bhaskar Pathe,  
Age : 39 years, Occ. Agri,  
R/o. Near Ganpati Temple, Tq. Gangapur,  
Dist : Chhatrapati Sambhajnagar.
- 9] Shri Balasaheb Khaserao Shete,  
Age: 72 years, Occ. Agri,  
R/o. Newargaon, Tq. Gangapur,  
Dist. Chhatrapati Sambhajnagar.
- 10] Shri Lahu Sitaram Barde,  
Age : 52 years, Occ. Agri,  
R/o. Chendufal, Tq. Vaijapur,  
Dist : Chhatrapati Sambhajnagar.
- 11] Shri Subhash Sitaram Barde,  
Age : 52 years, Occ. Agri,  
R/o. Chendufal, Tq. Vaijapur,  
Dist : Chhatrapati Sambhajnagar.
- 12] Shri Sunil Fakirchand Mundhare,  
Age : 57 years, Occ. Agri,  
R/o. Near Army Camp, Bhagur,

Tq. Dist. Nashik  
[Respondent no. 1 to 12 are the Appellant  
in M.C.A.No.54/2025]

- 13] Shri Abhijeet Ashok Galande,  
Age : 45 years, Occ. Agri.  
R/o. Chandufal, Tq. Vaijapur,  
Dist : Chh. Sambhajinagar.
- 14] Shri Sanjay Vitthal Pawar,  
Age : 55 years, Occ. Agri,  
R/o. Rahuri, Tq. Rahuri,  
Dist : Ahilyanagar.
- 15] Shri Suresh Sambhaji Dimbar,  
Age: 50 years, Occ. Agri,  
R/o. Chendufal, Tq. Vaijapur,  
Dist. Chh. Sambhajinagar.
- 16] Shri Kadu Eknath Kadam,  
Age: 60 years, Occ. Agri,  
R/o. Newargaon, Tq. Vaijapur,  
Dist. Chh. Sambhajinagar.
- 17] Shri Vidhatai Kisan Mule,  
Age: 50 years, Occ. Agri,  
R/o. Chendufal, Tq. Vaijapur,  
Dist : Chh. Sambhajinagar.
- 18] Shri Rajendra Machhindra Kanghare,  
Age: 50 years, Occ. Agri,  
R/o. Near Vaijapur Market Committee,  
Zopadpatti, Tq. Vaijapur  
Dist. Chh. Sambhajinagar.
- 19] Shri Ramesh Fakirchand Mundhare,  
Age: 60 years, Occ. Agri,  
R/o. Near Army Camp, Tq. Bhagur,  
Dist. Nashik.

- 20] Shri Vilas Punjaram Parve,  
Age :52 years, Occ. Agri,  
R/o. Bhatgaon, Tq. Yeola,  
Dist : Nashik.
- 21] Talathi, Saja Newaragaon  
Tq. Gangapur,  
Dist : Chh. Sambhajinagar.
- 22] Mandal Officer,  
Revenue Mandal Manjri, Gangapur,  
Dist : Chh. Sambhajinagar.
- 23] Tehsildar, Gangapur  
Dist : Chh. Sambhajinagar.

[Respondent no.13 to 23 are original  
Respondent in M.C.A.No. 54/2025 and all the  
respondents are original Respondent in R.C.A.  
No.369/2023]

[Notices to were only issued to petitioners and  
not to other respondents in M.C.A.No.54/2025]

**...RESPONDENTS**

...

Mr.V.D.Sapkal, Senior Advocate i/b.Mr.A.D.Khedkar,  
Advocate for the petitioners.  
Mr.K.B.Jadhavar, AGP for the respondent-State.  
Mr.V.D.Salunke, Advocate for the respondent Nos. 1 to 3  
and 7.

...

**CORAM : ARUN R. PEDNEKER, J.**

**DATE : 16.12.2025**

**ORDER :**

1] By the present writ petition, the petitioners challenge the impugned order dated 01.12.2025 passed by the appellate Court in M.C.A.No. 54/2025 whereby the Appellate Court has set aside the order of trial Court, granting injunction in favour of the petitioners and further directing the authorities not to implement order dated 21.04.2023 of the Mamlatdar passed under Section 5 of the Mamlatdars' Courts Act. The Appellate Court has dismissed the injunction application and directed the plaintiffs not to obstruct the pathway of the respondents.

Facts leading to filing of the present writ petition in brief are summarized as under :

2] The respondents are the owners in possession of the agricultural lands Gat Nos.44, 45, 46, 47, 48 and 53. All the lands are *Bagayat*, irrigated on Godavari river. The petitioners are the owners of the land Gat Nos.52 and 55 respectively. The respondent nos. 1 to 20 filed an application before the Mamlatdar under Section 5 of the

Mamlatdars' Courts Act contending therein that the petitioners have obstructed the road – cart way leading to their agricultural lands and that the directions be issued to the petitioners to remove obstructions and open the road. The said application was contested and the orders were passed by the Mamlatdar directing opening of the road after conducting spot inspection and panchanama. The order of the Mamlatdar is challenged in the civil suit by contending that the Mamlatdar has not followed the provisions of the Mamlatdars' Courts Act, as such, prayed for setting aside the order of the Mamlatdar. True translation of the prayers made in Regular Civil Suit No.369/2023 are as under:

*b) The panchanama dated 07/01/2023 prepared by the Tahsildar and Circle Officer in respect of the private road belonging to and in possession of the plaintiffs as mentioned in paragraph No.2 of the plaint, the Report dated 11/01/2023 forwarded to the Tahsil Office, and the Order dated 21/04/2023 passed by the Tahsildar, Gangapur (defendant No.23) be declared illegal and the same be permanently quashed.*

*c) Defendant nos. 1 to 20, their relatives, well-wishers, labourers or any other persons, in collusion with defendant Nos. 21 to 23, be permanently restrained by a perpetual injunction from coming to Gat No. 52 and 55 and the*

*disputed road and from forcibly encroaching upon or creating any obstruction on the private road belonging to and in possession of the plaintiffs, pursuant to the order dated 21/04/2023.*

3] In the said suit, the interim application for injunction was also filed. True translation of the above prayers made in the application for injunction are as under:

b) That pursuant to the order dated 21/04/2023, defendant Nos.1 to 20, their relatives, well-wishers, labourers or any other persons, in collusion with defendant Nos. 21 to 23, be restrained by a temporary injunction from forcibly encroaching upon or creating any obstruction on the private road belonging to and in the possession of the plaintiffs situated at Gat No. 52 and 55 and the disputed road, till the final disposal of the original suit.

c) That defendant nos. 21 to 23 be restrained by a temporary injunction from implementing / enforcing the said order dated 21/04/2023 till the final disposal of the original suit, thereby protecting the rights of the plaintiffs.

4] Considering the material placed on record and particularly non following of the proper procedure by the Mamlatdar while passing the order under Section 5 of the Mamlatdars' Courts Act, the trial Court, by order dated 29.07.2025, allowed the injunction application (Exh.5)

against the respondent nos.1 to 20 by directing that the order dated 21.04.2023 passed by the Mamlatdar, Gangapur should not be implemented till the final disposal of the suit.

5] The said order dated 29.07.2025 passed in Exh.5 application of the Civil Judge was challenged by the respondents before the Appellate Court and the Appellate Court, by order dated 01.12.2025 set aside the order dated 29.07.2025 passed by the Civil Judge and further gave certain directions against the petitioners–plaintiffs not to obstruct road used by the respondents and also restrained the Mamlatdar/authorities not to expand the road to 10 ft. by removing obstruction as directed by the Mamlatdar, during the pendency of the suit.

6] Challenging the above order dated 01.12.2025 of the District Court, the learned counsel for the petitioners submits that the order of the Mamlatdar under the Mamlatdars Courts Act granting road is prima facie illegal as he had not followed the provisions of Section 7 and 8 of

the Mamlatdars' Courts Act, as such, the petitioners have challenged the order of Mamlatdar passed under Section 5 of the Mamlatdars' Courts Act in the civil suit. The petitioners have also filed application for injunction and the said application was allowed by the trial Court. He further submits that the Appellate Court while setting aside the order of injunction deviated well settled principle of grant of injunction and further erred in issuing direction against the petitioners without any counter claim by the respondents. He submits that at best the Appellate Court could have dismissed the injunction application and not grant any direction against the petitioners. The learned counsel for the petitioner relies upon the judgments in the case of **Manohar Lal (Dead) by LRS. Vs. Ugrasen (Dead) By LRS. And others** reported in [2010] 11 SCC 557, in the case of **Mohammad Rahim Khan Vs. Shankar Maroti Dhage and another** reported in 2017 DGLS (Bom.) 235, in the case of **Vasudev Pandharinath Raikar and others Vs. Manoj Mohan Dalvi and others** reported in 2018 DGLS (Bom.) 801, in the case of **Rajendra Sheshrao Shendge Vs. Shobhatai Shrirao**

**Ravate and anr.** reported in **2007 (Supp.) Bom.C.R. 547**, in the case of **Dinkar Kisan Khedkar Vs. State of Maharashtra and others** reported in **2025 DGLS (Bom.) 2506**, so also, in the case of **Vimal Bhausahab Nabde Vs. The Sub Divisional Officer, Ahmednagar & others** in Writ Petition No.5074 of 2022 along with connected writ petitions, decided on 4<sup>th</sup> August, 2025.

7] *Per contra*, the learned counsel for the respondents submits that the Mamlatdar has exercised its authority in accordance with law under Section 5 of the Mamlatdars' Courts Act and has directed removal of obstruction and there can be no appeal against the order of the Mamlatdar before the Civil Court as no statutory right of appeal is provided under the Mamlatdars' Courts Act before the Civil Court. However, Section 22 of the Mamlatdars' Courts Act provide that any order passed by the Civil Court in exercise of its ordinary civil jurisdiction qua the same subject matter would oust the order passed by the authorities constituted under the Mamlatdars' Courts Act

and the order of the Mamlatdar cannot be challenged as an appellate remedy before the civil court. He further submits that notwithstanding above legal position, if it is assumed that such order of Mamlatdar under Section 5 can be challenged before the Civil Court, in the facts of the instant case, the findings of the Mamlatdar, so also, the trial Court and also the Appellate Court are that the petitioners have obstructed the government road and the road is not a private road owned and possessed by the plaintiffs–petitioners. He further submits that the petitioners – plaintiffs have absolutely no right over the property on which right of road is claimed as the same is government road and is supported by the documentary evidence and similar is the findings of all the authorities. In absence of any right vested in favour of the petitioners–plaintiffs qua road, injunction not to use the road cannot be granted against the respondents at the instance of the petitioners.

8]           Having considered the rial submissions, this Court while dealing with the issue of challenge to the order

of Mamlatdar under Section 5 of the Mamlatdars' Courts Act before the Civil Court, in the case of **Mohammad Rahim Khan Vs. Shankar Maroti Dhage and another** reported in **2017 DGLS (Bom.) 235** this Court dealt with question of law in Second Appeal at para no.3 (b) as under :

b) Whether civil suit lies against the order passed by the Mamlatdar's Court under the Mamlatdar Courts Act, 1906?

9] In the aforesaid judgment of **Mohammad Rahim Khan** [supra], this Court has observed that in the absence of such finality being attached to the order passed under the Act, the jurisdiction of the Civil Court cannot be held to be impliedly barred merely because the Act provides a separate machinery for getting the grievance redressed. The ouster of the plenary jurisdiction of Civil Court cannot be readily interfered and such jurisdiction remains intact and available to be exercised either **against the order under section 5 or against the order of revision under section 23 of the said Act.**

10] It is further observed in the said judgment that

the Mamlatdars' Courts Act presupposes and recognizes existence and continuation of powers and jurisdiction of Civil Court. The scheme provides for a summary jurisdiction and powers.

11] The facts in the case of **Mohammad Rahim Khan** [supra] indicate that injunction was granted in favour of the plaintiff as the plaintiff therein had claimed that the defendant had no right of way from his land. Similar view is taken by the Bombay High court in the case of **Vasudev Pandharinath Raikar and others Vs. Manoj Mohan Dalvi and others** reported in **2018 DGLS (Bom.) 801** wherein it is observed that the Civil Court has jurisdiction to entertain, try and decide the suit challenging the order passed under Section 5 of the Mamlatdar's Courts Act. This Court in the case of **Vimal Bahusaheb Nabde Vs. the Sub Divisional Officer** in Writ Petition No.5074 of 2022 along with connected writ petitions, decided on 04.08.2025 has observed that remedy of civil suit is available in order to challenge orders passed by the authorities under the

Mamlatdars' Courts Act and that the said remedy is more meaningful and effective remedy.

12] This Court in the case of **Mangalabai Vitthal Jadhav and another Vs. Manisha Gokul Jadhav and others** in Second Appeal St. No.25760/2018, decided on 10.12.2018 and in the case of **Baban @ Nainsukh Dagadu Kurandale and another Vs. Dattu Sadashiv Kurandale and others** in Writ Petition No.4425/2021, decided on 05.07.2022 has held that whenever a civil suit is filed with respect to a matter which is decided by a Mamlatdar or the Collector in exercise of revisional powers under the Act, the Civil Court should decide the suit on its own merits in the light of evidence brought before it and that it **cannot decide the suit as if it is deciding an appeal against order passed by the Mamlatdar or the Collector.**

13] In the case of **Dinkar Kisan Khedkar Vs. State of Maharashtra and others** reported in 2025 DGLS (Bom.) 2506, this Court has discussed the view taken in the case of **Vimal Bhausaheb Nabde** [supra] and referred the

following question for determination to the Larger Bench, as under :

“Whether filing of civil suit is a remedy available for challenge to the merit of orders passed by the authorities under the Mamlatdars’ Courts Act, in case where the orders passed are not sought to be declared as nullity?”

14] In view of the various conflicting judgments on this aspect, the issue is now referred to the Larger Bench i.e. whether the Civil Court can examine the order passed by the Mamlatdar under Section 5 of the Mamlatdars’ Courts Act on merits in a civil suit. In the present case also the Civil Suit is filed challenging the order of the Mamlatdar.

15] However, since there is disputed legal position on the aspect of remedy of civil suit to challenge the order of the Mamlatdar on merits, for the purpose of deciding this petition, I have proceeded to examine the issues on merits.

16] Coming to the issue i.e. whether injunction was rightly refused by the Appellate Court, the findings recorded by both the Courts below including the trial Court is that

there exist a *shivrasta* (road) from the boundary of field of the petitioners-plaintiffs going to the field of the respondents and the *shivrasta* (road) is owned by the government. The finding of ownership of *shivrasta* (road) is based on documentary evidence. Considering the prima-facie finding of fact that the road is a public road owned by the Government, the petitioners have no independent right over the property i.e. the Government road on which the petitioners are seeking injunction. The petitioners cannot claim any injunction qua respondents-defendants to use government road and that the petitioners have no right over the land. Thus, the order of the Appellate Court refusing injunction cannot be faulted with.

17] As regards second submission of the petitioners, no directions ought to have been made against the plaintiffs by the Appellate Court while rejecting the application below Exh. 5. It is to be noted that the observations / directions made by the Appellate Court are partly in favour of the petitioners and the direction is only to keep road as it is in

existence and not to open the road to the extent of 10 feet as directed by the Mamlatdar. Further direction is issued to the plaintiffs not to obstruct respondents from using the road. If the injunction application is simplicitor dismissed, the order of the Mamlatdar would remain in force with direction to open 10 feet road. Thus, the directions of the Appellate Court are partly in favour of the petitioners and are thus not interfered with.

18] Thus, no case is made out on merits and the Writ Petition is accordingly dismissed.

**[ARUN R. PEDNEKER]**  
**JUDGE**

DDC