



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

54 WRIT PETITION NO. 15496 OF 2025

KASHINATH VENKAT BIRAJDAR AND OTHERS

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

...

Advocate for the Petitioners : Mr. Santosh N. Patne

AGP for Respondent/State: Mr. S. G. Joshi

Advocate for Respondents No.4 to 12 : Mr. S. S. Gangakhedkar

...

CORAM : ARUN R. PEDNEKER, J.

DATE : 22.12.2025

PER COURT:

1. Heard.

2. The learned counsel for the petitioners submits that in the application filed by the original applicants / respondents under Section 5 of the Mamlatdars Courts Act, considering the evidence and the spot panchanama, the Mamlatdar directed opening of the road by removal of the obstruction. Clause 2 of the operative order dated 03.10.2025 of the Tahsildar / Mamlatdar reads as under:

“...

२. मौजे एकोंडी (ज.) ता. उमरगा येथील जमीन स. नं. २३/४, २३/५, २३/६, २३/७, २३/८, २३/९ मधील जमिनीस अर्जदार यांना जाणे येणेसाठी सर्वे नं.२३/३ या जमिनीच्या दक्षिण बाजूकडील बांधालगत असलेल्या पूर्वापार वहिवाटीच्या शेतारस्त्यावर गैरअर्जदार यांनी केलेले अडथळे दूर करून त्यांनी सदर रस्ता अर्जदार यांना वहिवाटीसाठी पूर्ववत खुला करून देण्यात यावा.

...”

3. The said order of the Tahsildar was challenged in the civil suit. Maintainability of the civil suit to challenge the order of the Mamlatdar under section 5 of the Mamlatdars Courts Act is contested as there are contradictory Judgments on this aspect and the matter is before the Larger Bench.

4. On merits, in the civil suit, in the injunction application filed, the trial court granted the injunction against the defendants / original applicants under section 5 of the Mamlatdars Court Act. Appeal was filed by the defendants in the civil suit / applicants under Section 5. The appellate court by the impugned order dated 05.12.2025, passed in Miscellaneous Civil Appeal No.20/2025, set-aside the order of injunction granted by the trial court and made certain observations at Paragraphs No.24 and 25, as under:

“24. Plaintiff filed suit making allegations against the order of Nayab Tahsildar. Nayab Tahsildar is not made party to the suit. This suit is filed by plaintiff seeking relief against the order of Nayab Tahsildar by restraining defendants to go to their field. It is the specific pleading of the plaintiff in writing that they have no objection for giving way from the Sarbandh. Learned advocate of defendants no.1 to 9 fairly conceded at a bar that defendant nos. 1 to 9 are not creating new way or taking any portion of the suit property to have ingress and egress to their land.

25. At one side defendants no.1 to 9 came with their case alongwith the order of Nayab Tahsildar. Plaintiff also alleges against the order of Nayab Tahsildar. But plaintiff though alleged order of Nayab Tahsildar not made party to him to this suit. Nayab Tahsildar has no voice to say against his order in the suit. Defendant nos.

1 to 9 are not from one and the same family. They are the different farmers having the small portion of land and their livelihood depends on the cultivation of this land. By this suit, plaintiff tried to stop Nayab Tahsildar, defendant nos. 1 to 9 from making implementation of the order. Order of Nayab Tahsildar itself shows that obstruction removal order from the पूर्वपार वहिवाट is given. Defendants no.1 to 9 are not adjacent owner of the other land. But they are co-sharer of the same Gat no.23 having the equal right to make use of the way from the Sarbandh situated at south side of the suit property. Therefore I answer point nos. 1 to 3 in the negative, for point no.4 in affirmative, for point no.5 pass following order.”

5. The appellate court has observed that the access is only claimed on the bandh i.e. embankment and that there should be no obstruction on the embankment. Considering the same, I see no reason to interfere. As such, the challenge to the impugned order is rejected. However, the Tahsildar / Mamlatdar is directed to open the road only to the extent of embankment / bandh. This is only an interim arrangement pending the suit and at the stage of final hearing of the civil suit, the civil court should not be influenced by any observations made in this order.

6. The writ petition stands accordingly disposed of.

[ARUN R. PEDNEKER, J.]