

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.11298 OF 2025**

1. Chandrakant Ankush Kangude,
Age: 38 years, Occu.: Agriculturist.
2. Laxman Dehu Kangude,
Age: 60 years, Occu.: Agriculturist.
3. Lahu Dehu Kangude,
Age: 65 years, Occu.: Agriculturist.
All R/o. At Umbare,
Taluka Pandharpur, District Solapur.Petitioners

Vs.

1. Vaibhav Dilip Chavan,
Age: 58 Years, Occu.: Agriculturist,
R/o. At Umbare,
Taluka Pandharpur, District Solapur.
2. Sub Divisional Officer,
Pandharpur, District Solapur.
3. Tahasildar,
Pandharpur, District Solapur.Respondents

Mr. Rushikesh C. Barge, i/b. Mr . Ajay Joshi for the Petitioners.
Ms. Manisha Devkar with Mr. Shankar Katkar, for the Respondent No.1.
Mr. Sanjay D. Rayrikar, AGP, for the Respondent Nos.2 & 3-State.

CORAM : S. G. CHAPALGAONKAR, J.

RESERVED ON: 7th NOVEMBER 2025

PRONOUNCED ON : 20th NOVEMBER 2025

JUDGMENT :-

1. The present Writ Petition takes exception to order dated 16th

April 2025 passed by Respondent No.2-Sub Divisional Officer, Pandharpur, in RTS/appeal/102/2024, thereby upholding order dated 17th January 2024 passed by Respondent No.3-Tahsildar under Section 5(2) of Mamlatdar's Courts Act, 1906 (For short, '**MCA**').

2. Respondent No.1/Plaintiff approached Respondent No.3 under Section 5(2) of MCA contending that he is owner and possessor of land Gat No.231. It has been purchased by his father from Tukaram Krishna Chavan under registered sale deed dated 3rd January 2007. The land is subdivided into parts. There is Umbare-Kanhapuri public road. On eastern side of said road, Petitioners are holding land in Gat No.243, particularly Gat No.243/3 and 243/4. On western side of Umbare-Kanhapuri Road, the water channel have been created. Petitioners claimed that they are owners of said part of land. As such, they are obstructing access towards Umbare-Kanhapuri road from land situated in Gat number 231/1/A.

3. Petitioners contested suit contending that Respondent No.1 has previously instituted Regular Civil Suit No.442 of 2007 in respect of same property before Civil Court. Present suit is barred under Section 26(b) MCA. The Umbare-Kanhapuri road have been

constructed in year 1972. They possessed some land on western side of Gat No.231 beyond road. Respondent No.1 is trying to grab said property by instituting false proceeding, although he has alternate access road to approach Umbare-Kanhapuri road.

4. Respondent No.3-Tahsildar caused panchnama and after hearing parties allowed suit of Respondent No.1 and restrained Petitioners from obstructing access from Gat No.231/1/A towards Umbare Page-Kanhapuri Road. Respondent No.3 observed that Petitioners have created obstruction by putting wooden logs and parking tractor-trolleys and directed removal of such obstruction.

5. Aggrieved Petitioners filed Revision Application No.102 of 2024 before Sub Divisional Officer, Pandharpur (For short '**SDO**') under Section 23(2) of MCA. However, Respondent No.2-SDO rejected Revision Application vide impugned order dated 16th April 2025. Hence, this Writ Petition.

6. Mr Rishikesh Barge, learned Advocate appearing for Petitioners raises two-fold contentions. He would submit that Respondent No.1 had already instituted Regular Civil Suit No.442 of 2007 before Civil

Court seeking decree of injunction and possession in respect of same property. Therefore, jurisdiction of Mamlatdar to entertain suit has been barred under Section 26(b) of MCA. Secondly, he would submit that there is no pleading regarding existence of access way from land of Respondent No.1 to Umbare-Kanhapuri. Tahsildar caused panchnama, but no existing road was found on spot. Respondent No.3-Tahsildar could not have exercised jurisdiction under Section 5(2) of MCA in absence of specific findings as to existence of access way.

7. Per contra, Smt. Manisha Devkar, learned Advocate appearing for Respondent No.1 supports impugned order. She would submit that artificial obstructions have been created by Petitioners in access way of Respondent No.1. They have parked tractor-trolley and put some wooden logs, which blocked the access of Respondent No.1 to Umbare-Kanhapuri road. Respondent No.1 is not in a position to effectively transport agriculture equipments and produce. She would submit that Respondent No.3 has rightly exercised jurisdiction vested with him under Section 5 of MCA and passed impugned order.

8. Having considered submissions advanced by learned Advocates

appearing for respective parties and on perusal of record tendered into service, it is evident that Respondent No.1 is owner of land in Gat No.231, whereas Petitioners hold land Gat No.243. In between those lands, Umbare-Kanhapuri road passes. According to Respondent No.1, Petitioners have created obstruction in his access to Umbare-Kanhapuri road from his land Gat No.231, by putting the obstacles of tractor-trolley and wooden logs.

9. Per Contra, Petitioners are contending that Respondent No.1 had no access way to approach Umbare-Kanhapuri road as claimed and Respondent No.1 is trying to use portion of their land by raising false claim.

10. The first objection raised by Petitioners is regarding maintainability of proceedings instituted by Respondent No.1 under Section 5(2) of MCA, in view of bar under Section 26(b). Undisputedly, Respondent No.1 has instituted Regular Civil Suit No.442 of 2007 before Civil Judge Junior Division at Pandharpur. However, on careful reading of plaint would show that dispute in that suit is pertaining to land Gat No.231/2/A. Petitioners are not party to said suit. The father of Petitioner No.1 is made party-defendant No.2 in said suit. The Respondent No.1 has claimed

possession of portion of land from Gat No.231/2/A, which has been allegedly encroached by defendants therein. The proceedings in Rasta case which is subject matter of present Writ Petition depicts that it has instituted in relation to Gat number 231/1/A. Evidently, subject matter and parties in Regular Civil Suit No.442 of 2007 and present proceeding in Rasta case are different. The bar under Section 26(b) of MCA would arise only when the earlier proceeding before Civil Court have been instituted in respect of same subject matter and between same parties or predecessor of parties. In light of aforesaid legal position and factual matrix, contentions of Petitioners that proceeding before Mamlatdar is barred cannot be countenanced.

11. The second objection raised on behalf of Petitioners is absence of specific pleading as to existence of suit way and finding recorded thereon. It is contention of Petitioners that there is no specific pleading before Tahsildar as to existence of access way from land of Respondent No.1 towards Umbare-Kanhapuri road. A perusal of pleading in Rasta Case would show that Respondent No.1 is denying Petitioners' right on portion of land towards western side of road. According to Respondent No.1, obstruction to access road started by

Petitioners since December 2021. Pertinently, Respondent No.1 is not claiming right from Petitioners' property. At least Petitioners have not brought material depicting existence of their land on western side of tar road.

12. At this stage, reference can be given to Section 5 of the MCA. The Mamlatdar is empowered to remove or cause to be removed any impediment, erected otherwise than the authority of law, to the natural flow in a defined channel or otherwise of any surface water naturally rising in or falling on any land used for agriculture, grazing, trees or crops on any adjacent land, where such impediment causes or is likely to cause damage to the land used for such purpose or to any such grazing, trees or crops thereon. Similarly Sub-section (2) of Section 5 of MCA empowers Mamlatdar to grant injunction in case, any impediment is erected or any attempt, otherwise than by due course of law. Looking to the aforesaid provisions of law, it is evident that Mamlatdar can exercise such powers, when he records a specific findings of disturbance or obstruction being caused by any person to use of road or customary ways available to approach agriculture land in possession of a person complaining such obstruction.

13. Tahsildar has caused panchnama, which records that Petitioners have parked tractor-trolley on portion of land between Umbare-Kanhapuri road and land of Respondent No.1 from Gat No.231. The panchnama records that some wooden logs are put on said land alongwith tractor and trolley, which have created obstacle for Respondent No.1's access to road.

14. In that view of the matter, this Court finds that Respondent Nos.2 and 3 have exercised jurisdiction vested with them within parameters of Section 5 of MCA. Respondent No.1 placed sufficient material before concerned authorities in support of his contentions. In that view of matter, this Court finds no reason to entertain Writ Petition.

15. In result, Writ Petition stands rejected.

(S. G. CHAPALGAONKAR, J.)

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signed by
RAJU
DATTATRAYA
GAIKWAD
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