

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9458 OF 2025

Ramchandra Kondiba Takale And Ors.

.. Petitioners

Versus

Balkrishna Sahebrao Takale And Ors.

Respondents

.....

- Mr. Rahul S. Kate, Advocate for Petitioner.
- Mr. Vivek Vijay Salunke, Advocate for Respondents.
- Mr. Hamid Mulla, AGP for Respondent Nos.7 and 8.

.....

CORAM : MILIND N. JADHAV, J.

DATE : NOVEMBER 17, 2025

P.C.:

1. Heard Mr. Kate, learned Advocate for Petitioner; Mr. Salunke, learned Advocate for Respondents and Mr. Mulla, learned AGP for Respondent Nos.7 and 8.

2. Petitioner is aggrieved with the twin impugned orders passed by the Tahsildar in the principal proceedings which is an interim order and rejection of Appeal in challenge by the Sub-Divisional Officer.

3. Both Orders are appended at page No.39 and page No.50 passed by Tahsildar dated 19.08.2024 and Sub-Divisional Officer dated 13.03.2025. It is seen that Respondent No.1 filed Application under Section 138 of the Maharashtra Land Revenue Code, 1966 seeking intervention of Competent Authority and removal of encroachment in respect of Gat Nos.62, 68 and 70.

4. Grievance of private Respondent is that encroachment has been effected by Petitioner in respect of Gat No.62. Once such Application is made, the same is required to be taken to its logical conclusion by following the due process of law as envisaged under the Maharashtra Land Revenue Code, 1966 read with its Rules.

5. That procedure has already been undertaken as informed by Mr. Salunkhe.

6. When Application was filed, Petitioner being aggrieved filed a counter Application under Order VII Rule 11 of the Code of Civil Procedure, 1908 seeking rejection of Application filed by private Respondent on the ground of jurisdiction of the Tahsildar to determine the same. The said Application has been rejected.

7. Mr. Kate would be right in his contention if Tahsildar determines entitlement of the parties but in the present case, it is *prima facie* seen that any Application made under Section 138 needs to follow the rigors of the law whereby after issuing notice and carrying out the amendment and comparing it with the office record maintained by the Talathi in respect of respective holdings of the parties, the Tahsildar being a statutory Officer is required to thereafter hear both the parties and pass an appropriate order and directions for removal of encroachment.

8. In that view of the matter, no fault can be found with the

order dated 19.08.2024 passed by Tahsildar. Even otherwise the said order is an interim order which directs that parties shall be issued notice for further hearing of encroachment Application No.3 of 2023. The said encroachment Application is admittedly still pending.

9. One of the grievance advanced by Mr. Kate is that ruling and decision of this Court (Coram : A. S. Chandurkar, J.) in case of *Gajanan Son of Nagorao Devtale Vs. Madhukar S/o Motiram Umakar and Ors.*¹ covers such an Application which is filed and therefore same deserves to be dismissed. The learned Tahsildar who is the statutory Officer is directed to take cognizance of the said decision also and any other decision that will be placed before him by the contesting Respondents in pending Application No.3 of 2023 for determining the said Application filed by private Respondents under Section 138 of the Maharashtra Land Revenue Code, 1966.

10. Needless to state that all contentions of both the parties are expressly kept open without giving any imprimatur on merits and facts of the matter. Tahsildar is directed to determine the said Application on its own merits and strictly in accordance with law without being influenced by any of observations and findings in the impugned orders dated 13.03.2025 and 19.08.2024.

11. Needless to state that pending Application No.3 of 2023.

¹ Writ Petition No.1368 of 2017 decided on 22.03.2018

shall be determined by the Tahsildar as expeditiously as possible and in any event within a period of eight weeks from today after hearing both the sides and he is directed to pass a speaking reasoned order thereon.

12. With the above directions, Writ Petition is disposed.

H. H. SAWANT

[MILIND N. JADHAV, J.]

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