

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 12618 OF 2025

Manohar Kashinath Dhage & Anr

..Petitioners

Versus

Abaji Nana Pawar & Ors

...Respondents

Mr. Nitin Gaware Patil, for the Petitioners.

Mr. Sanjay P. Shinde, with Prathmesh T Bhanuwanshe, for
Respondent No.1.

CORAM: N. J. JAMADAR, J.

DATE : 3rd OCTOBER 2025

ORAL ORDER:

1. Heard the learned Counsel for the parties.
2. The challenge in this Petition is to the judgment and order dated 10th September 2025 passed by the learned District Judge, Nashik, in MCA No. 55 of 2023, whereby the learned District Judge, allowed the the Appeal preferred by the Respondent Nos. 1 to 27 and set aside the order dated 7th June 2023 passed by the learned Civil Judge, Junior Division, Dindori, below an Application for temporary injunction (Exhibit "5") in RCS No. 303 of 2022.
3. By the said order dated 7th June 2023, the learned Civil Judge had restrained the Respondent Nos. 1 to 27 from entering into the Suit

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road and from carrying out any work or causing any obstruction in relation to the Suit road.

4. Initially, the Respondent Nos. 1 to 27 had filed a proceeding, being Wahiwat Case No. 9 of 2021, under Section 5 of the Mamlatdar's Courts Act, 1906, alleging obstruction to the way which runs through the lands being Gat Nos. 241 and 245, (the Suit lands). The Tahshildar caused a spot inspection. A panchnama of the spot inspection was drawn. It was, *inter alia*, reported that the suit road was in existence and the Petitioners have caused obstruction. The Tahshildar, thus, passed an order of removal of obstruction.

5. Being aggrieved, the Petitioners had preferred Revision before the Sub-Divisional Officer. The said Revision was dismissed by the Sub-Divisional officer by a judgment and order dated 5th September 2022.

6. The Petitioners thereupon instituted a Suit before the Civil Court seeking a declaration that the orders passed by the Mamlatdar in Wahiwat Case No. 9 of 2021 dated 9th June 2022 and affirmed by the Sub-Divisional Officer on 5th September 2022 in RTS Revision No. 50 of 2022, were null, void and illegal. A consequential relief of injunction to restrain the Defendants-Respondents Nos. 1 to 27 from entering upon the suit road, or digging the said road or otherwise causing obstruction to the possession of the Plaintiffs over the suit road, was also sought.

7. In the said Suit, an Application for temporary injunction (Exhibit “5”), was taken out. The learned Civil Judge was persuaded to allow the Application for temporary injunction. The learned Civil Judge was of the view that there was an admission before the Mamlatdar that there was an alternate road. Thus, the Defendants would not suffer any irreparable loss in the event the injunction was granted.

8. Being aggrieved, the Respondent Nos. 1 to 27 carried the matter in Appeal before the District Court.

9. The learned District Judge was persuaded to interfere with the exercise of discretion by the Trial Court, as the fact that the Suit road was in existence was *prima facie* incontrovertible. The question whether only the Plaintiffs were entitled to exclusive use of the Suit road, being a private road, as asserted by the Plaintiffs, or Defendant Nos. 1 to 27 have also been using the Suit Road to approach to their fields warranted adjudication after appraisal of evidence. Therefore, at the stage of grant of temporary injunction, the Application could not have been decided solely on the basis of an admission regarding the existence of an alternate road, without evaluating the circumstances in which the said admission was allegedly given.

10. Mr. Patil, the learned Counsel for the Petitioners, submitted that the learned District Judge ought not to have interfered with the impugned order in the face of existence of an alternate road to access

their fields. It was further submitted taking undue advantage of the vacation of the order of injunction, by the learned District Judge, the Defendant Nos. 1 to 27 have created a new road.

11. In opposition to this, Mr. Shinde the learned Counsel for the Respondent Nos. 1 to 27, would submit that the existence of the alternate road has not been established. In fact, the Respondent Nos. 1 to 27 had prayed for appointment of the Court Commissioner to ascertain the existence of the alternate road. The said prayer was opposed on behalf of the Petitioners.

12. I have perused the material on record. The principal apprehension of the Petitioners seems to be that taking undue advantage of the orders passed by the Authorities under the Mamlatdar's Courts Act, 1906, the Defendant Nos. 1 to 27 would lay a new road and encroach upon the Suit lands. The apprehension stems from the fact that, after the impugned order passed by the learned District Judge, Defendant Nos. 1 to 27 attempted to open the road by using JCB machines.

13. The nature of the order that can be passed by Mamlatdar under Section 5 of the Mamlatdar's Courts Act, 1906, is required to be kept in view. The Mamlatdar is invested with the jurisdiction to remove the impediment to the access, unauthorisedly erected. Resultantly, armed

with an order passed by the Mamlatdar, a party cannot be permitted to lay a new road or create new road, where it does not exist.

14. In the case at hand, the existence of the suit road cannot be controverted. The question that would warrant adjudication at the trial is, whether the Petitioners-Plaintiffs are entitled to use the Suit road exclusively or the Defendant Nos. 1 to 27 are also entitled to use the same Suit road to access their agricultural lands. Surely, such a question can be legitimately adjudicated on the basis of evidence which may be adduced by the parties.

15. In this view of the matter, the learned District Judge, was justified in interfering with the discretionary order passed by the trial Court. However, the refusal to grant an injunction does not cloth the Defendant Nos. 1 to 27 with an authority to create a new road, lay a new road or improve the existing road. What the Defendant Nos. 1 to 27 are entitled to is to the removal of impediment and use the existing road for access to their fields.

16. The Petition, therefore, stands dismissed with a clarification that the Defendant Nos. 1 to 27 shall use the existing road, in the state as it obtains today, after removal of the impediment, if it still exists, as ordered by the Mamlatdar, and shall not be entitled to create any new road, lay a new road or improve the road in any manner whatsoever.

17. The learned Civil Judge shall decide the Suit as expeditiously as possible, on its own merits and in accordance with law without being influenced by any of the observations in the order passed by the learned District Judge and this order.

18. Petition disposed.

[N. J. JAMADAR, J.]