



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 1662 OF 2025

Shri Gangadhar S/o Narayanrao Gawhale,
Aged about 62 years, Occ. Agriculturist,
R/o Village Bibi-Sawali, Tahsil Hingna,
Dist. Nagpur.

...Petitioner

// VERSUS //

1. State of Maharashtra, through Principal Secretary, Department of Revenue and Forest Mantralaya, Mumbai-32
2. The Tahsildar,
Tahsil Office, Hingna, Dist. Nagpur
3. Shri Sachin Kumawat,
Tahsildar Hingna, Tahsil Hingna,
Dist. Nagpur
4. Shri Sharad Dhondbaji Gawhale,
Aged 42 years, Occ. Nil,
R/o Bibi Sawali, Tahsil Hingna, Dist.
Nagpur

... Respondents

Shri Shri M.P. Kariya, Advocate for the petitioner.
Ms. Sonia Thakur, AGP for the respondent nos. 1 and 2/State.
Shri N.S. Khubalkar, Advocate for the respondent no.4.

CORAM : NIVEDITA P. MEHTA, J.

Reserved on : 15th October, 2025

Pronounced on : 04th November, 2025

JUDGMENT

Rule. Rule made returnable forthwith. Heard finally by consent of the learned counsel appearing for the respective parties.

2. The petitioner has challenged the order dated 12.03.2025, passed by the Tahsildar, Hingna in Revenue Case No. 2-LND-10/2024-25, pertaining to Mouza Bibi Sawali, Tahsil Hingna, District Nagpur. It is the contention of the petitioner that the said order has been passed without granting an opportunity of hearing, is devoid of reasons, and has been influenced by extraneous considerations, allegedly as per the directives of the Hon'ble Revenue Minister, resulting in a decision favorable to respondent no.4.

3. Brief facts of the case are that the mother of respondent no.4, namely Smt. Sushila W/o Dhondbaji Gawhale, and one Mahadeo Gawhale, filed an application before the Naib-Tahsildar in the year 2008, claiming obstruction caused by the petitioner in accessing their respective agricultural lands bearing Survey Nos. 93 and 94. It was alleged that the petitioner, being the owner of Survey No. 49, had closed a road which provided access to the lands of the said applicants. By order dated 01.12.2008, the Naib-Tahsildar directed removal of such obstruction by invoking his power under Section 143

of the Maharashtra Land Revenue Code, 1966 (hereinafter referred to as “MLR Code”).

The petitioner assailed the said order by filing Regular Civil Suit No. 204 of 2009 before the Civil Judge, Senior Division, Nagpur, seeking a declaration and perpetual injunction. The petitioner contended that he is the owner of Survey No. 49. The mother of respondent no.4, namely Smt. Sushila W/o Dhondbaji Gawhale, and Mahadeo Gawhale had no lawful right to claim access through his land.

The learned Civil Judge, Sr. Dn., Nagpur by judgment and decree dated 15.04.2011, allowed the suit, set aside the Naib-Tahsildar’s order dated 01.12.2008, and restrained the defendants therein from using the disputed way through Survey Nos. 49/1 and 49/2, except in accordance with due process of law.

4. Aggrieved thereby, an appeal being Regular Civil Appeal No. 807 of 2012 was preferred by mother of respondent no.4, namely Smt. Sushila W/o Dhondbaji Gawhale, and Mahadeo Gawhale before the District Judge-11, Nagpur, who, by judgment dated 22.09.2017, allowed the appeal, set aside the decree, and remanded the matter to the trial Court for fresh adjudication, granting liberty to defendant no.3 to cross-examine the witness and to both

parties to lead additional evidence. The trial Court was directed to dispose of the suit by 31.12.2017. As per the direction of the Appellate Court, the Civil Judge Sr.Dn., Nagpur vide order dated 30.01.2019 decreed the suit with costs in favour of the petitioner, cancelled and set aside the order dated 1.12.2008 passed by the Naib Tahsildar, Hingna. The defendants were restrained from using the way from the Survey no. 49/1 and 49/2 belonging to the petitioner otherwise than due course of law.

5. Despite the judgment and order of the Civil Judge, Senior Division, Nagpur dated 30.01.2019 which attained finality, the respondent no.4 Shri Sharad Dhondbaji Gawhale filed a fresh application before the Tahsildar on 24.06.2020, alleging that the petitioner had encroached upon a traditional right of way for the past 20 years. Notably, the said application was silent as to the statutory provision under which it was filed. The petitioner filed a reply stating that the subject matter of the application was already concluded before the civil court. Nevertheless, the Naib-Tahsildar, by order dated 23.11.2020, purportedly invoking Section 143 of the MLR Code, 1966, allowed the application and directed provision of right of way through the northern side of Survey No. 49, belonging to the petitioner.

6. The petitioner challenged the said order by filing a revision under Section 23 of the Mamlatdar's Courts Act, before the Sub-Divisional Officer, vide Revision Case No. A/MCA-5/2021-22. The said revision was dismissed by order dated 31.05.2022 on the ground of maintainability, holding that an appeal, not a revision, was the appropriate remedy.

A subsequent writ petition bearing W.P. No. 3045 of 2022 filed before this Court came to be dismissed by order dated 18.04.2023, in view of availability of alternate remedy of appeal.

7. Thereafter, the petitioner filed an appeal under Section 247 of the MLR Code, 1966 before the Sub-Divisional Officer, which came to be dismissed on 30.10.2023. An appeal before the Additional Collector, Nagpur, also met the same fate and was dismissed by order dated 14.08.2023.

8. The petitioner then preferred a revision before the Divisional Commissioner, Nagpur, bearing No.100/LND-30/2024-25, which was partly allowed by order dated 06.12.2024, whereby the matter was remanded to the Tahsildar with a direction to pass a fresh order in accordance with law, keeping in view the civil court proceedings.

9. Pursuant to the remand, the Tahsildar re-adjudicated the matter and passed the impugned order dated 12.03.2025, again allowing the application of respondent no.4. The present writ petition has been filed assailing the said order on the grounds *inter alia* that: (a) The order is vitiated by breach of principles of natural justice; (b) It is passed without due consideration of the pending civil proceedings and (c) It is arbitrary and influenced by extraneous considerations.

10. Learned counsel for the petitioner, Mr. Kariya, submitted that the impugned order dated 12.03.2025 passed by the Tahsildar is vitiated on multiple grounds, primarily that it has been passed without assigning any reasons, without affording an opportunity of hearing to the petitioner, and in complete disregard of the principles of natural justice. He invited the attention of this Court to the 'Rojnama' (order sheet) placed on record, which, according to him, does not reflect that any opportunity for hearing, submission of arguments, or personal appearance was granted to the petitioner prior to the passing of the said order.

11. It is further submitted that the issues raised by respondent no.4 before the Tahsildar were directly and substantially in issue in Regular Civil Suit No. 204 of 2009, which had been adjudicated by the learned Civil Judge,

Senior Division, Nagpur, and was allowed vide judgment and decree dated 30.01.2019, in favor of the present petitioner. Notably, Smt. Sushila W/o Dhondbaji Gawhale, the mother of respondent no.4, was a party to the said proceedings. However, the outcome of these proceedings were not disclosed by respondent no.4 in the application made before the Tahsildar, which amounts to suppression of material facts and misleads the revenue authority.

12. He further submitted that respondent no.4 is the son of the owners of adjoining lands bearing Survey Nos. 92 and 94 who have been using an alternative route to access their respective lands for over 20 years, and that the 'mouka panchnama ahwal' on record clearly evidences the existence of such an alternate access. In these circumstances, the insistence of respondent no.4 for creation of a right of way through the petitioner's land is wholly unjustified and oppressive.

13. It is also contended that the invocation of Section 143 of the Maharashtra Land Revenue Code, 1966 by the Tahsildar is legally untenable, particularly in view of the judgment and order dated 30.01.2019 passed by the Civil Judge Senior Division, Nagpur on the very same issue regarding right of way, which has attained finality, there being no challenge to the said judgment and decree.

14. In support of his submissions, learned counsel placed reliance on the decision of this Court in Writ Petition No. 6610 of 2018, decided on 14.06.2023 (*Shri Ramkrushna Bhauroa Katole vs. Praful Mahadeorao Aarole and Another*), to contend that the Tahsildar must provide clear notice to the parties about specific legal provisions he intends to invoke while deciding an application under the Mamalatdars' Courts Act, 1906 or the Maharashtra Land Revenue Code, 1966. In the present matter the Tahsildar has not given such notice to the petitioner before entertaining the application filed by respondent no. 4 dated 24.06.2020.

15. Learned counsel for respondent no.4, Mr. Kubhalkar, submitted that the father of respondent no.4 is the owner of agricultural land bearing Survey No. 92, and his mother is the owner of Survey No. 94, both are adjacent to each other situated at Mouza Bibi Sawali, Tahsil Hingna, District Nagpur. It is his contention that the said lands are landlocked and inaccessible, and therefore, the intervention of the Tahsildar was both necessary and justified. He submitted that the Rojnama (order sheet) clearly reflects that the Tahsildar interacted with the parties before passing the order dated 12.03.2025, and due process was followed.

16. Learned counsel contended that the petitioner's reliance on Regular Civil Suit No. 204 of 2009 is misplaced, as the subject matter of that suit pertains only to Survey No. 94, owned by the mother of respondent no.4, and does not relate to Survey No. 92, which is owned by the father of respondent no.4. Furthermore, it was argued that the father of respondent no.4 was not a party to the said civil suit, and therefore, any adjudication therein cannot bind him or respondent no.4 in respect of the access to Survey No. 92.

17. It was further submitted that the application dated 24.06.2020, filed by respondent no.4 before the Tahsildar, though not citing a specific statutory provision, was filed in his capacity as an illiterate agriculturist, and this omission should not be held against him. The Tahsildar rightly invoked Section 143 of the Maharashtra Land Revenue Code, 1966, and after due spot inspection and proceedings, granted a right of way along the northern boundary of Survey No. 49, owned by the petitioner.

18. Learned counsel argued that the spot panchanama conducted pursuant to the Tahsildar's directions clearly demonstrates that there exists no feasible alternative access to Survey Nos. 92 and 94. The Tahsildar, while granting the right of way, also imposed reasonable and protective conditions, specifically directing respondent no.4 to exercise caution and not cause any

damage to the crops or property of the petitioner. The access granted is limited only to the boundary of the petitioner's land and does not cut through its midst, thereby ensuring minimal inconvenience to the petitioner.

19. It is further submitted that the order passed by the Tahsildar is well-reasoned and equitable, particularly considering the adverse impact on respondent no.4 and his family, who, due to the lack of access to their agricultural land, have been deprived of cultivation and income. Consequently, respondent no.4 and his wife are compelled to work as agricultural labourers in others' fields, earning a meager livelihood, despite owning cultivable lands. Reference is made to the 7/12 extracts of Survey Nos. 92 and 94, which reflect the lands as "currently barren", thereby underscoring the genuine hardship faced by respondent no.4.

20. In support of his submissions, learned counsel relied upon the decision of this Hon'ble Court in Writ Petition No. 6861 of 2016, and takes support to contend that the respondent no. 4 being a poor agriculturist having no knowledge about the jurisdiction of the authorities under different statutes, approached the Tahsildar with handwritten application and accordingly the same has been correctly entertained and does not warrant interference.

21. Having heard the learned counsel for the parties and perused the record, this Court proceeds to consider the rival contentions in the light of the undisputed factual matrix and the legal framework governing the controversy. The core issue which arises for determination is whether the Tahsildar, Hingna, was justified in invoking powers under Section 143 of the Maharashtra Land Revenue Code, 1966 (“MLR Code”) to grant a right of way through the petitioner’s land, notwithstanding the final adjudication by a competent civil court on the very same issue and in alleged breach of principles of natural justice.

22. It is an admitted position that the question of right of way through Survey Nos. 49/1 and 49/2 was the subject matter of Regular Civil Suit No. 204 of 2009 instituted by the present petitioner. By a decree dated 30.01.2019, the learned Civil Judge, Senior Division, Nagpur, declared that the defendants therein (including Smt. Sushila W/o Dhondbaji Gawhale, the mother of respondent no.4) had no right of access through the petitioner’s land and restrained them from using the said way except in accordance with law.

23. That decree has admittedly attained finality, as no appeal or other challenge has been shown to have been filed. The principle of *res judicata* under Section 11 of the Code of Civil Procedure, 1908, would therefore

operate to preclude respondent no.4, who claims under his parents, from re-agitating the same cause of action before another forum. It is well settled that where a competent civil court has adjudicated a dispute relating to property rights or easements, revenue authorities have no jurisdiction to reopen or modify such determination.

24. The record reveals that the application dated 24.06.2020 filed by respondent no.4 was substantially identical in substance to the earlier application made in 2008 by his mother and one Mahadeo Gawhale. Both alleged obstruction in access to the same lands (Survey Nos. 93 and 94) and sought creation of a right of way through Survey No. 49 belonging to the petitioner. The Tahsildar's order of 12.03.2025, therefore, traversed ground already covered by the civil court decree of 30.01.2019.

25. The Tahsildar's jurisdiction under Section 143 of the MLR Code is confined to summary administrative powers to remove unlawful obstruction on existing public or customary paths. The said provision does not empower the Tahsildar to adjudicate civil rights or to create a new right of way *de novo*, particularly where the question of such right has been conclusively decided by a civil court. Any such attempt amounts to usurpation of civil jurisdiction and renders the order without authority of law.

26. The Divisional Commissioner, while remanding the matter on 06.12.2024, specifically directed the Tahsildar to pass a fresh order “keeping in view the civil court proceedings.” However, the impugned order dated 12.03.2025 reveals no reference to or analysis of the civil court decree. The Tahsildar’s failure to consider a binding judicial determination amounts to a jurisdictional error, vitiating the order in its entirety.

27. The petitioner has placed on record the *Rojnama* (order sheet) of the Tahsildar’s proceedings, which indeed does not disclose that any notice of final hearing or opportunity for arguments was given prior to the passing of the impugned order. The order itself is cryptic, devoid of reasoning, and does not record consideration of the petitioner’s submissions or objections.

28. Administrative authorities exercising quasi-judicial functions are bound to adhere to the principles of *audi alteram partem*, requiring notice, opportunity to reply, and a reasoned decision. The absence of these safeguards vitiates the decision-making process itself.

29. Merely because the Tahsildar had conducted a spot inspection cannot substitute a proper hearing. The record does not demonstrate that the petitioner was informed of the legal basis of the proceedings; whether under the MLR Code or the Mamlatdars’ Courts Act, 1906 or was invited to address

jurisdictional objections. In *Ramkrushna Bhaurao Katole* (supra), this Court has emphasized that the authority must notify the parties of the statutory provision being invoked and must record reasons for invoking it. The Tahsildar's failure to do so renders the proceedings arbitrary and non est in law.

30. It is not disputed that respondent no.4's mother, Smt. Sushila W/o Dhondbaji Gawhale, was a party to the RCS. 204/2009 and that the decree passed therein was adverse to her claim. The application dated 24.06.2020 filed before the Tahsildar, however, makes no mention whatsoever of the said civil litigation. Such deliberate suppression of material facts dis-entitles respondent no.4 to any equitable relief before the revenue authorities.

31. The suppression assumes significance as the Tahsildar's order of 12.03.2025 rests on an erroneous assumption that no prior adjudication existed and that the matter was being raised for the first time. The omission, therefore, materially influenced the outcome and demonstrates lack of candor on the part of respondent no.4.

32. The *Mouka Panchnama Ahwal produced by the petitioner prima facie* indicates the existence of an alternate route providing access to Survey Nos. 92 and 94 through adjoining lands, which has allegedly been in use for over two decades. The Tahsildar's order neither disbelieves this evidence nor

records any finding that such access is impossible. The mere inconvenience or greater distance of an alternative route cannot justify creation of a new right of way through a private holding without due process of law.

33. While the hardship pleaded by respondent no.4 deserves sympathy, equity cannot override legality. It is trite that equity follows the law and cannot be invoked to sustain an order passed in excess of jurisdiction. If the respondents truly believe that no access exists, their remedy lies in approaching the competent civil court for declaration and easementary rights, not through summary administrative processes under the MLR Code.

34. The subject matter of the proceedings before the Tahsildar was directly and substantially in issue in Regular Civil Suit No. 204 of 2009, which has attained finality; hence, the doctrine of *res judicata* bars re-agitation of the same issue. The Tahsildar, by invoking Section 143 of the MLR Code to create a right of way, acted beyond jurisdiction, as the provision does not empower him to adjudicate civil rights contrary to a subsisting civil court decree.

35. The impugned order dated 12.03.2025 suffers from violation of natural justice, being passed without hearing, or reasoned discussion. Respondent no.4's suppression of prior civil litigation and decree constitutes material non-disclosure, dis-entitling him to any discretionary relief. The

existence of an alternative route, as recorded in the *panchnama*, further militates against the necessity of granting right of way through the petitioner's land.

36. In light of the foregoing analysis, this Court is satisfied that the impugned order dated 12.03.2025 passed by the Tahsildar, Hingna in Revenue Case No. 2-LND-10/2024-25 is unsustainable. The same is liable to be quashed and set aside. The matter deserves to be remanded back to Tahsildar, Hingna for fresh consideration by giving a fair opportunity of hearing to the petitioner and for consideration of the claim in the light of the judgment and decree dated 30.01.2019.

Accordingly, the writ petition is partly allowed. The impugned order dated 12.03.2025 is quashed and set aside and the matter is remanded back to the Tahsildar for fresh consideration and decision within a period of 2 months from the date of receipt of this order. Rule is made absolute in the aforesaid terms. No order as to costs.

[NIVEDITA P. MEHTA, J.]