



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,  
NAGPUR BENCH, NAGPUR.**

**WRIT PETITION NO. 844/2024**

**Ratan S/o Dagdu Kaware,**  
Aged about 60 years, Occ. Agriculture,  
R/o. Choundhi, Tq. Mehkar,  
District Buldhana

**.... PETITIONER(S)**

**// VERSUS //**

- (1) **Sub-Divisional Officer,**  
Mehkar, Tq. Mehkar,  
District Buldhana
- (2) **Tahsildar,**  
Mehkar, Tq. Mehkar, District Buldhana
- (3) **Revenue Inspector,**  
Deulgaon Mali, Tq. Mehkar,  
District Buldhana
- (4) **Talathi,**  
Choundhi, Tq. Mehkar,  
District Buldhana
- (5) **Rajesh S/o Uttamrao Chhabile,**  
Aged about 56 years, Occ. Agriculture,  
R/o. Gajanan Nagar, DP Road Mehkar,  
Tq. Mehkar, District Buldhana
- (6) **Subhash S/o Bajirao Kaware,**  
Aged about 51 years, Occ. Agriculturist,
- (7) **Raju S/o Bajirao Kaware,**  
Aged about 41 years, Occ. Agriculturist,

- (8) **Santosh S/o Uttamrao Kaware,**  
Aged about 61 years, Occ. Agriculturist,
- (9) **Vinod S/o Santosh Kaware,**  
Aged about 36 years, Occ. Agriculturist,
- (10) **Sanjay S/o Santosh Kaware,**  
Aged about 31 years, Occ. Agriculturist
- (11) **Gajanan S/o Pandhari Kaware,**  
Aged about 41 years, Occ. Agriculturist

Respondent Nos. 6 to 11 are R/o. Choundhi,  
Tq. Mehkar, District Buldhana

.... **RESPONDENT(S)**

Shri S.M. Awachar, Advocate for the Petitioner(s)  
Shri S.V. Deshmukh, Advocate for the Respondent Nos. 5-11

**CORAM : M.S. JAWALKAR, J.**  
**APRIL 25, 2025**

**ORAL JUDGMENT :-**

. **RULE.** Rule made returnable forthwith. Heard finally by  
consent of learned Counsel for the respective parties.

(2) The present Petition is filed by the Petitioner challenging  
the order dated 17/10/2023 passed by the Respondent No. 1 -

Sub-Divisional Officer, Mehkar whereby the prayer made by the Petitioner to remove the obstruction created by the Respondent Nos. 5 to 11 came to be rejected and the order dated 23/01/2023 passed by the Tahsildar, Mehkar was confirmed whereby the learned Tahsildar has created a new way from the boundary of Gat Nos. 26, 25, 27, 20 & 18.

(3) The Petitioner has filed an Application under Section 5 of the Mamlatdar's Courts Act, 1906 bearing No. MC Act 5/Chondhi/50-2021-22 before the learned Tahsildar, Mehkar for removal of obstruction created by the Respondent Nos. 5 to 11. In the said Application, the Petitioner has stated that he is having 2 acres of land bearing Gat No. 19 and there was customary way from Kalap Vihir Pandhi – Badnapur which was passing through from the western side boundary of Gat No. 26. From that way, he used to approach the Gat No. 19.

(4) It is also the contention of the Petitioner that there is a way passing through Gat No. 26 and the Respondent Nos. 1 and 2 allowed the Petitioner to pass through the north boundary of Gat No. 26. As his way was obstructed by the Respondent Nos. 5 to

11, he had filed an Application under Section 5 of the Mamlatdar's Courts Act, 1906. He has submitted the relevant documents.

(5) The learned Tahsildar specifically observed that there is no way except which one passing through the field of the Non-Applicants therein. He has no alternative way and as on today, the Non-Applicants therein have obstructed the way by putting thorny plants, stones and by digging Nala. As such, the Application for temporary injunction was allowed. However, while passing the final order, the Applicant/Petitioner was directed to give common dhura through Gat Nos. 26 and 27 to reach his field Gat No. 19. While passing this order, the Tahsildar has not disclosed whether there is customary way which is also shown in the map of Revenue Authorities passing through the Gat Nos. 34, 26 & 19. Without recording any finding to that effect, the learned Tahsildar directed the Applicant to use the common dhura passing through Gat Nos. 26 and 27 from the east-west boundary. The learned Sub-Divisional Officer also confirmed the order passed by the learned Tahsildar.

(6) Learned Counsel for the Petitioner has submitted that there are certain mandatory provisions which the Tahsildar has to follow while dealing with the matters under Section 5 of the Mamlatdar's Courts Act, 1906. He has also drawn my attention to the fact that though the affidavits of all the adjacent land owners were filed by the Petitioner, those were neither considered by the learned Tahsildar nor by the learned Sub-Divisional Officer. One Ramdas Kavre, who was owner of Gat No. 26 deposed in his affidavit that the Applicant was using the customary way before he sold the property to Subhash Bajirao Kavre and Rajesh Uttamrao Chabiledra. Even after that, the same was being used by the Applicant. The affidavit of one Tukaram Gaikwad is placed on record, who is the owner of Gat No. 20. He also deposed in his affidavit that there is a customary way from only Gat No. 26 and the same is being used by the Applicant for transporting bullock cart and tractor. He also deposed that this customary way was being used since the time of forefathers of the Applicant. He has deposed that he was the owner of Gat No. 26 and has sold out 9 acres of land before 12 years to Ramdas Dagdu Kavre.

(7) In view of all these affidavits, the learned Tahsildar ought to have considered whether there was any customary way to approach to the field of the Applicant from the field Gat No. 26. Without appreciating any evidence on record, the learned Tahsildar passed an order without recording any finding whether there was any customary way, as alleged by the Complainant. Unless that finding is there, the learned Tahsildar is not having the jurisdiction under the Mamlatdar's Courts Act, 1906 to grant any alternate way. In the whole order, there is no finding that there was any customary way. As such, in my considered view, both the impugned orders passed by the learned Sub-Divisional Officer as well as the learned Tahsildar are required to be quashed and set aside.

(8) Hence, I proceed to pass following order:-

### **ORDER**

(a) The Writ Petition is **allowed**.

(b) The order dated 17/10/2023 passed by the Sub-Divisional Officer, Mehkar in M.C. Act-5/Choundhi/Revision Case No. 24/2022-23 and the order dated 23/01/2023 passed by the learned Tahsildar, Mamlatdar Court, Mehkar in M.C. Act-5/Choundhi/38/2021-22 are hereby quashed and set aside.

(c) The matter is remitted back to the learned Tahsildar, Mamlatdar Court, Mehkar to pass appropriate orders after granting opportunity of hearing to the parties afresh and after considering all the documents including the affidavits of the adjacent owners filed by the Petitioner/Applicant.

(d) The parties shall appear before the learned Tahsildar, Mamlatdar Court, Mehkar on 15/05/2025 at 11:00 am.

The Petition stands **disposed of** in the above terms.  
Pending Application(s), if any, stand(s) **disposed of**.

**(M.S. JAWALKAR, J.)**