



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

WRIT PETITION NO. 2686/2024

Dilip Marotrao Ghurde,
Aged 54 years, Occ. Agriculturist,
Residing at Tiwasa, Taluka Tiwasa,
District Amravati

.... PETITIONER(S)

// VERSUS //

- (1) **The Sub-Divisional Officer,**
Tiwasa- Bhatkuli, District Amravati
- (2) **The Naib Tahsildar,**
Tiwasa
- (3) **Govardhan Ganpatrao Pohekar,**
Aged 45 years, Occ. Agriculturist,
Residing at Ward No. 1, Nimbhora Delwadi,
Amravati, District Amravati 444903
- (4) **Bhushan Hemraj Talan,**
Aged 32 years, Occ. Private Job,
- (5) **Hemraj Nagoraoji Talan,**
Aged 40 years, Occ. Agriculturist,
- (6) **Rajdeep Hemraj Talan,**
Aged 28 years, Occ. Private,

Respondent Nos. 4 to 6 are all
residing at Ward No. 1, Nimbhora,
Delwadi, Amravati, District Amravati
444903

.... RESPONDENT(S)

Shri R.D. Dhande, Advocate for the Petitioner(s)
Ms. D. Charlewar, AGP for the Respondent/State
Shri M.V. Rai, Advocate for the Respondent No. 3
Shri S.D. Dharaskar, Advocate for the Respondent Nos. 4 to 6

CORAM : M.S. JAWALKAR, J.
APRIL 08, 2025

ORAL JUDGMENT:-

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

(2) The present Writ Petition is filed by the Petitioner challenging the order dated 24/12/2018 passed by the learned Sub-Divisional Officer, Tiwasa-Bhatkuli in Revenue Case No. 3/MCA-5/Nimbhora (Devwadi)/2016-17.

(3) The main objection of the Petitioner is that the Sub-Divisional Officer has granted new way to the Respondents, specifically under Section 5 of the Mamlatdar's Courts Act, 1906 under which any obstruction can be removed, if there is a way already existing.

(4) After going through the impugned order, it appears that the learned Sub-Divisional Officer granted way from Survey Nos. 57/3 and 57/2/A from Southern side and directed to remove the obstruction, however, it appears that there is no discussion on the evidence considered by the Tahsildar nor on the map prepared by the Tahsildar on the spot for coming to the conclusion that the road was in existence from Dhura of Survey Nos. 57/3 and 57/2-A. In my considered opinion, though there is no new road granted by the Sub-Divisional Officer, he has not even given sufficient reasons for reopening of the road which, as per his understanding, was in existence from the above referred survey numbers.

(5) Insofar as the use of e-class land by the Respondents as well as the other agriculturists is concerned, there is neither any clear cut finding to the effect that since when that land is being used by the agriculturists nor there is any finding since when the road, as alleged, was in existence was encroached by the Petitioner herein. Insofar as the judgment in the case of **Krushna Damaji Choudhari & another vs. Additional Commissioner,**

Nagpur & others reported in 2012(5) Bom. C.R. 815,

relied on by the learned Counsel for the Petitioner is concerned, though it is in respect of the parameters in which the Mamlatdar's Court has powers, in my considered opinion, it is not applicable in the present set of facts. Here, the Sub-Divisional Officer has not granted any new way but concluded that there was a way in existence. However, there is no sufficient evidence discussed to come to such conclusion.

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

ORDER

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

(b) The order dated 24/12/2018 passed by the learned Sub-Divisional Officer, Tiwasa-Bhatkuli in Revenue Case No. 3/MCA-5/Nimbhora(Devwadi)/2016-17 is hereby quashed and set aside.

(c) The matter is remitted back to the learned Sub-Divisional Officer, Tiwasa-Bhatkuli for fresh consideration.

The Sub-Divisional Officer shall decide the matter within a period of eight weeks from today.

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

(M.S. JAWALKAR, J.)