



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 5582/2024

1. Vaman S/o Mannaji Badrake
Aged about 60 year, Occ. Agriculture,
2. Sahebrao S/o Mannaji Badrake
Aged about 55 years, Occ. Agriculture,
3. Bandu S/o Mannaji Badrake
Aged about 53 years, Occ. Agriculture,
4. Chetan S/o Vaman Badrake
Aged about 29 year, Occ. Agriculture,
5. Akshya S/o Vaman Badrake
Aged about 27 year, Occ. Agriculture

All Petitioners R/o Pahi, Tq. Achalpur,
Dist. Amravati.

... PETITIONERS

...VERSUS...

1. Sub-Divisional Officer,
Achalpur, Dist. Amravati
2. Tahsildar, Achalpur,
Tq. Achalpur, Dist. Amravati
3. Purushottam S/o Vinayak Badrake
Aged about year, Occ. Agriculture
4. Arun S/o Bhagwanrao Badrake
Aged about year, Occ. Agriculture
5. Vilas S/o Bhagwanrao Badrake
Aged about year, Occ. Agriculture

6. Dadarao S/o Bajirao Badrake
Aged about year, Occ. Agriculture
7. Charandas S/o Dadarao Ingle
Aged about year, Occ. Agriculture
8. Anil S/o Bapurao Vadhale
Aged about year, Occ. Agriculture
9. Sudam S/o Bapurao Vadhale
Aged about year, Occ. Agriculture
10. Saurabh S/o Shrikrushna Badrake
Aged about year, Occ. Agriculture

Respondent No.3 to 10, R/o. Pahi,
Tq. Achalpur, Dist. Amravati

11. Anil S/o Mical More
Aged about year, Occ. Agriculture
12. Anju w/o Anil More
Aged about year, Occ. Agriculture

Respondent Nos.11 to 12, R/o. Pipriya
Post Khamriya, Tq. & Dist. Jabalpur, MP

13. Kamlabai Namdeo More
Aged about year, Occ. Agriculture
R/o. Mahendra Nagar, Nagpur.
Tq. & Dist. Nagpur.
14. Kaushalya Ruprao Bagle
Aged about year, Occ. Agriculture
R/o. Ajni, Tq. & Dist. Nagpur.
15. Sugandha Deorao Javanjal
Aged about year, Occ. Agriculture
R/o Near Cruseland Mangal Karalaya,

Railway St. Road, Tq Murtizapur,
Dist. Akola

16. Baby Danyaneshwar Bhatkar
Aged about year, Occ. Agriculture
R/o. Sector 9, Airoli Thane,
Mumbai (West)
17. Shobha Ramesh Netanwar
Aged about year, Occ. Agriculture
R/o. Hingna Road, Rajiv Gandhi Nagar,
Nagpur, Tq. & Dist. Nagpur
18. Nanda Angad Gathe
Aged about year, Occ. Agriculture
R/o Naygaon Bordi, Tq. Achalpur,
Dist. Amravati
19. Lata Jagdeo Barde
Aged about year, Occ. Agriculture
R/o Sector 9, Airoli Thane,
Mumbai (West)
20. Ranjan Ashok More
Aged about year, Occ. Agriculture
R/o Mahendra Nagar, Nagpur,
Tq. & Dist. Nagpur.
21. Pravin S/o Jagdev Barde
Aged about year, Occ. Agriculture
22. Archana Devna Athvale
Aged about year, Occ. Agriculture
Respondent Nos.21 & 22, R/o. Sector 9
Airoli Thane, Mumbai (West)

...**RESPONDENTS**

Mr. Anand P. Thakare, Advocate for petitioners.
Mr. H.D. Futane, AGP for respondent Nos.1 & 2/State.
Mr. P.R. Agrawal, Advocate for respondent No.3.

CORAM : SMT. M. S. JAWALKAR, J.

DATE OF RESERVING THE JUDGMENT : 17/01/2025

DATE OF PRONOUNCING THE JUDGMENT: 12/02/2025

JUDGMENT

. Rule. Rule made returnable forthwith. Heard learned Counsel for the respective parties.

2. Being aggrieved by the orders dated 29.08.2023 passed by Mamlatdar Court and order dated 12.08.2024 passed by the sub-divisional officer, thereby rejected the revision, the petitioners have preferred the present petition.

4. The contention of the petitioner is that petitioner Nos.1 to 3 are the owners and possessors of Gat No.242. Petitioner No.4 is the owner and possessor of Gat No.243. Petitioner No.5 is the owner and possessor of Gat No.183. The respondent No.3 is the owner and possessor of Gat No.125. The petitioner No.1 to 3 have been regularly using the Pahi Gavthan Government road situated at the norther side of Gat No.125 owned by respondent No.3 and further used the road from western side from the boundary of Gat

No.125 to approach Gat No.242. The respondent Nos.3 to 5 also used the same Gavthan Government road to approach the said Gat Nos.124 and 125. The petitioner Nos.3 and 4 along with the other respondents have been using the Anjangaon Shindi Achalpur Road which is located to the southern side of Gat Nos.182 and 183 to approach their respective agricultural fields. Map dated 29.06.2022, clearly shows that the approach boundary road for Gat Nos.123, 124, 125, 126 and 242 all within survey No. 38 is demarcated from G4 to G5 and then further from R4 to R3 respectively. The approached road for Gat Nos.180, 181, 182, 243 and 244 all within survey No.39 is demarcated from G1 to G6 and then further from R1 to R2 respectively. Gat No.243 is also shown to have one water tank (Haud) and one well towards the north western corner.

5. Petitioner Nos.1 to 3 and respondent Nos.1 to 3 have been using the Pahi Gaothan Government road situated at the norther side of Gat No.125 and petitioner Nos.4 and 5 along with the other respondents have been using the Anjangaon Shindi Achalpur Road which is located to the southern side of Gat No.182 and 183. The respondent Nos. 3 to 5 filed an application under

Section 5 of the Mamlatdar Courts Act and was trying to create entirely new approach road from point R1 to R4 so as to go to their respective agricultural fields and further closing the old approach road from point R4 to R3. During the pendency of the said application, the Talathi of the said village inspected the land and reported that there is no other road available to the respondent Nos.3 to 5 to approach their respective agricultural fields. After that the respondent No.2 passed an order dated 29.08.2023. Being aggrieved by the said order, the present petitioners filed Revision before the respondent No.1. The respondent No.1 thereafter rejected the said revision vide order dated 12.08.2024. Hence the present writ petition.

6. Learned Counsel for the petitioners contended that both the learned authorities below failed to consider that the respondent Nos. 3 to 5 is having alternate way to access their agricultural fields from the northern side of Gat. No.125, which they have been using before. Only due to the political rivalry, the respondent Nos. 3 to 5 have filed the frivolous application. That the application filed by the respondent No.3 is not tenable as the

same is filed for creating an entirely new road there by demolishing the old structure i.e. water tank (Haud) which is in existence since 1988 in Gat No.243.

7. It is further contended that both the authorities below erred in not taking into consideration that the petitioners have filed separate application before the respondent No.2 under Section 5 of the Mamlatdar's Courts Act for removal of obstruction created by the respondent No.3 therein on the said approached road used by the applicants therein to approach their land. Hence prayed for the interference by this Court in the impugned order which needs to be set aside.

8. Learned Counsel for petitioner relied on following citations:

- 1) ***Gaurakshan Sansthan Vs. State of Maharashtra and Ors., (2019) 3 ALL MR 849***
- 2) ***Sudam Namdeo Madke Vs. State of Maharashtra and Ors. (2021 DGLS (Bom.) 2085***

9. Learned Counsel for the respondents supported the judgment passed by the learned authorities below and contended that if the cross-examination of the witnesses of the petitioners is

considered, the same is sufficient to negate the claim of the petitioners as the witness Vaman (petitioner No.1) had admitted that the Field Survey No.243, 242, 244, 125 and 126 were earlier survey No.38. It means that all the above referred fields survey numbers were the part and parcel of same survey number prior to its sub division and therefore, the same approached road is available to all the survey numbers. Even the map on which the petitioners are relying the road is shown from Anjangaon Sindhi to Achalpur road till survey No.244 and which suddenly shown as disconnected with the construction of tank. All these facts are rightly taken into consideration by the learned authorities below and passed an appropriate order which needs to be confirmed.

10. Learned Counsel for respondent No.3 relied on following citations

1) *Shankar Govindrao Sarnaik and anr. Vs. Sub Divisional Officer, Washim and Ors., 2012 (3) ALL MR 669*

2) *Vishwanath S/o Rambhaji Bhalerao and anr. Vs. Usha w/o Pralhad Kasbe, 2010 (5) ALL MR 77*

3) *Motiram Raibhanji Nighot Vs. Harishchandra Govindrao Aadkine and Ors., 2010(1) ALL MR 778*

***4) Syed Mahaboob Raju Vs. Habibsha Garibsha,
1968 Mh. L.J. 494***

11. I have heard both parties at length. Perused documents placed on record including impugned order and also considered citations relied on by the parties. The learned Mamlatdar vide its order dated 21.08.2023 allowed the application filed by the respondents herein. It was directed that the present petitioners should not obstruct the way of applicant from the field at Pahi from the northern side of Gat No.183 inner side of western dhura of Gat No.183, which further passes through Gat Nos.180, 181, 182, 183, 243, 244 from the inner side of western boundary to reach applicant to Gat No.124 and 125 for carrying agricultural implements, bullock cart, tractor-trolley should not be obstructed.

12. The petitioners contention is that respondents Nos.3 to 5 filed an application under Section 5 of the Mamlatdars' Courts Act and were trying to create entirely new approach road to go to their respective agriculture fields. In the order of Mamlatdar, it is observed that the field of applicants i.e. respondents No.3 to 5 is

the ancestral property and the plaintiffs as well as their ancestors were using the said road, upon which, obstruction is created by creating a new tank on the road. They were never obstructed till 25.05.2022 by the present petitioner. However, thereafter he stopped the tractor from passing on that road. It appears that the Mamlatdar Court carried out a spot inspection and recorded its findings. It was specifically observed on the spot that after coming from Sindhi Achalpur Road, the field of Vaman Badrake, which is situated near the road, there is a road passing from the western side the inner side of boundary which proceed up to Gat No.243 owned by Chetan Badrake and the said road was about 8 to 10 feet wide. It was further observed that the road is closed from the field of Chetan Badrake to Vaman Badrake Gat No.242. Thereafter the said road again proceeds up to the field of applicant. After recording evidence, Mamlatdar Court recorded his finding that the survey number of the field of applicants and respondent Nos.1 to 6, 13 and 22 was original part of survey No.38.

13. In view of admission given by respondent Nos. 1 to 4 and 10 in the said application, they used the same way which is

coming to the Southern boundary of the field of respondent No.4 i.e. Gat No.243. Therefore, it is specifically observed by Mamlatdar that the said road is there up to Gat No.243 and as observed at the time of the spot inspection, further, that road was under the use of a tractor up to the field of the applicants i.e. Gat Nos.125 and 124.

14. It is further observed that respondents failed to prove that there is an alternate way to approach field Nos. 125 and 124. The learned Mamlatdar also considered these aspects that there is an admission on behalf of respondent No.10 and Amol Badrake that there is a well on the North-East of Gat Nos.124 and 125, there is a big well, as well as there are babul trees on Northern boundary, one Neem tree, all these trees might be aged 25 to 30 years and thus there is no question of any way from Southern boundary of Gat No.124 and accordingly passed the order. The Sub-Divisional Officer, Achalpur rejected the revision application as the order passed by the Tahsildar and Additional Mamlatdar cannot be faulted with. It has considered the evidence on record, the spot inspection and map. The learned Sub-Divisional Officer also specifically observed that all these Gat numbers were having one

old survey No.38 and confirmed the finding and rejected the revision application.

15. The learned Counsel for the petitioners raised ground that there was no compliance of Section 7 of the Mamlatdars' Courts Act, which speaks about contents of the plaint as there is no date on which cause of action arose is mentioned. However, there is no substance in the objection raised that the cause of action arose on 26.05.2022. The second objection is raised by the Counsel for the petitioners that plaint ought to have been rejected in view of Section 12. In my considered opinion, it will not apply in the present matter as there is specifically mentioned the cause of action arose on 26.05.2022 and the application was filed on 17.06.2022. Section 12 will come into application, if there is no compliance of Section 9 or the suit is filed after six months from the date of cause of action. As such there is no substance in the objection raised by the petitioners.

16. Learned Counsel for the respondent No.3 relied on **Motiram Raibhanji Nighot (supra)**, wherein it is held that since the

petitioner has no grievance before the authority in regards to the objection which is raised by the petitioner for the first time before this Court. The orders passed by the authorities cannot be interfered with on the basis of ground which is raised by the petitioner for the first time in the writ petition.

17. The learned Counsel for petitioners relied on *Gaurakshan Sansthan, Murtizapur (supra)*, wherein this Court held that if the plaintiff fails to furnish particulars as required by Section 7 within the time fixed under Section 9, as Mamlatdar is empowered to reject thereafter under Section 12. It shows mandatory nature of compliance to be done as separated by Section 7 of the Act. However already I have rejected the contention of the petitioners that there is no compliance of Section 7 of the Act.

18. Learned Counsel for petitioners also relied on **Sudam Namdeo Madke (supra)**, however, in my opinion, the facts are different in the matter before this Court in above referred petition. There was nothing on record in the said matter to show that Mamledar has followed the procedure as per the Mamlatdars'

Courts Act. He has not personally visited to the site nor recorded evidence or opportunity for the parties to cross-examine witnesses. Some statements are recorded by the Circle Officer and not by the Mamlatdar, therefore the matter was remitted back to the mamlatdar. In the present matter, there is evidence recorded by the Mamlatdar. The copies of depositions are also there on the record and due procedure is followed and concurrent finding is recorded by the Mamlatdar as well as a Sub-Divisional Officer.

19. The learned Counsel for respondents No.3 relied on *Shankar Govindrao Sarnaik and Anr. (supra)*, wherein this Court held that the spot inspection reports of Talathi and the Naib Tahsildar indicates the creation of obstruction on the Dhura of Gat No.62. The applicants were at liberty to cross-examine the respondents/plaintiffs, however, without raising any objection, the applicants entered the witness box, deposed and also submitted for cross-examination. In view of this, no fault can be found with the orders passed by the authorities below, directing removal of obstruction.

20. Learned Counsel for respondent No.3 also relied on ***Vishwanath s/o Rambhaji Bhalerao and Anr. (supra)***, wherein this Court held that the authorities under the Mamlatdars' Courts Act have recorded concurrent findings of facts, which may be treated as findings recorded on prime facie assessment of evidence and hence the orders passed by the authorities, on appreciation of material available on record, cannot be interfered with.

21. In the said matter, there was a suit filed before the Civil Court and it was the contention of the petitioner that the jurisdiction of the Civil Court is wider than the jurisdiction of the Mamlatdars' Courts and hence the Mamlatdars' Court should not have exercised its jurisdiction. However, the Court held that all such orders passed by the Mamlatdar and Sub-Divisional Officer in revisional jurisdiction shall be subject to the result of Regular Civil Suit No.108/2008.

22. Learned Counsel for the respondent No.3 also relied on ***Syed Mahaboob Raju (supra)***, in support of his contention that the scope under Section 23 of the Mamlatdars' Courts Act of Revisional authority is only limited to consider the question of legality and

propriety of a finding of the lower Court, the Revisional Court can only go into questions of law unless finding of fact is manifestly perverse or unreasonable. As such order of Revisional Court also cannot be faulted with.

23. As such, in my considered opinion, there is no substance in the petition. It appears from the order of the Tahsildar that the statement of all the parties were recorded and opportunity to lead evidence is also granted. He inspected the spot and concluded that there is obstructions on the right of way by creating a tank. The Tahsildar considered the evidence which was tendered in this case also considered each and every piece of evidence and come to the conclusion that there was right of way through the respondents' field to approach his field as all these Gat numbers were under one Old Survey No.38. There is no error or perversity in the findings recorded by both the authorities below as such petition is liable to be dismissed and accordingly **dismissed**.

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

R.S. Sahare