



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

910 WRIT PETITION NO.1086 OF 2026

UMAKANT GANGADHAR KAPSE AND ANOTHER

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

...

Mr. Menezes Joslyn A., Advocate for petitioners

Miss. Neha B. Kamble, AGP for respondent Nos.1 to 5

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CORAM : SMT. VIBHA KANKANWADI &
HITEN S. VENEGAVKAR, JJ.

DATE : 25th MARCH, 2026

ORDER :

. Present petition has been filed for following relief :

“(B) By issuance of the Writ of Mandamus or any other appropriate Writ, Order or direction, this Hon’ble Court may kindly be pleased to direct respondents to remove the encroachment on the road from Kanadkhed Shivar Gat No.257, 258 to Bhategaon Shiv (Sadak) and so also the Kantheshwar walking path so as to make the existing public road available for public use.”

2 Heard learned Advocate Mr. Menezes Joslyn A. for petitioners
and learned AGP Miss Neha B. Kamble for respondent Nos.1 to 5.

3 The petitioners are aggrieved by inaction on the part of
respondent authorities to remove the alleged encroachment on public road
used by petitioners and other farmers. The road is from Kanadkhed shivar
Gat Nos.257 and 258 to Bhategaon shiv road and walking path from
Kantheshwar, which has been encroached upon by adjoining land owners.

4 Learned Advocate for petitioners has taken us through the
documents. Initially, the application was made on 26.05.2023 and thereafter
on 13.05.2024. Thereupon, on 28.05.2024 the Tahsildar had given directions
to Circle Officer, Purna and Talathi, Sajja Kanadkhed to inspect the site and
give report on the eight points formulated. It appears that after much
persuasion, the inspection was done. Panchnama is stated to have been done
on 13.03.2025, wherein it was found that the adjoining owners have made
encroachment on the road and thereby blocked it. In spite of persuasion
when the respondents have not taken steps, specifically even after the
directions were given all are around 18.07.2025 by Tahsildar to the Naib
Tahsildar, Purna, Circle Officer, Purna and Village Revenue Officer,
Kanadkhed; yet, till today the said road has not been cleared and, therefore,
the petitioners have approached this Court.

5 It is to be noted that in the application dated 26.05.2023 and
13.05.2024 there is absolutely no mention about the alleged encroachment.

Rather at that time it was presented that due to the heavy rains the road has sunk and even readiness was shown to get the work of road done with the participation of people. When Tahsildar gave directions for spot inspection and to find out the answer for eight queries, it appears that ultimately the panchnama was done, wherein even the person who is stated to have made encroachment was taken as panch. In the panchnama dated 13.03.2025, no doubt, there is statement that in Gat No.257 to the extent of around 125 meters the road has been encroached, but it was stated that there is no crop taken on the said stretch. That portion was barren. The farmers then told the panchas that they have no objection for removal of encroachment, but again a statement has been made that those farmers, whose names are appearing on 7/12 extract of Gat No.258, were not present. It is also expressed that there was no demarcation of the boundary of Gat Nos.257 and 258. It was then also mentioned that the panchas tried to contact those farmers, whose names are appearing on 7/12 extract of adjacent land, they refused to take the notice. It appears that again Tahsildar by letter dated 13.03.2025 gave directions to remove the encroachment by inspecting the land on 07.04.2025. This direction was given to Naib Tahsildar, Purna and others. Thereafter, there appears to be a report along with panchnama on 07.04.2025 given by Village Revenue Officer to Tahsildar, wherein it has been specifically mentioned that when the officers gathered along with the

Surveyor from Taluka Inspector of Land Records and tried to measure the land by taking the middle of road and measuring 30 feet wide road, at that time resistance was made by farmers from Gat No.258 and it was specifically mentioned that they have filed civil suit. In the report, therefore, Village Revenue Officer states that the further action of removal of road would depend upon the order that would be passed by the Civil Court.

6 Thus, it is clear that some matter is pending before the Civil Court. The petitioners have not taken information about the said civil suit and have directly approached this Court. If the matter is pending before the Civil Court, then this will not be a fit case where we should exercise our powers under Article 226 of the Constitution of India. Further, the facts also involved the disputed question of facts as the measurement is in dispute and also the fact that in the initial applications i.e. on 26.05.2023 and 13.05.2024 the petitioners have not come with a case of encroachment. All these facts lead us to dismiss the writ petition. Accordingly, we **dismiss** the same. No order as to costs.

(HITEN S. VENEGAVKAR, J.)

(SMT. VIBHA KANKANWADI, J.)