



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

27 WRIT PETITION NO.15262 OF 2025

AATMARAM RAJARAM SHELKE AND OTHERS

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

...

Mr. S.N. Gaikwad, Advocate for petitioners

Mr. A.M. Phule, AGP for respondent Nos.1 to 4

...

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

DATE : 27th JANUARY, 2026

ORDER :

. Present petition has been filed for following reliefs :

“(B) Hold and declare that the action of the committee constituted under the chairmanship of respondent No.4 SDO, Pathardi Division is illegal, arbitrary and contrary to the final report dated 04.03.2023 submitted by respondent No.4 SDO, Pathardi Division to the office of respondent No.2 Collector, Ahilyanagar and for that purpose issue necessary orders.

(C) Issue a writ of mandamus or any other appropriate writ, order or directions in the nature of writ of mandamus, directing the

respondents to restore river bed as per earlier natural flow and remove the obstructions made by respondent No.5 and for that purpose issue necessary orders.

(D) Issue a writ of mandamus or any other appropriate writ, order or directions in the nature of writ of mandamus, directing respondent No.1 State thereby initiating action against the erring officers of the respondent authorities and for that purpose issue necessary orders.”

2 Heard learned Advocate for petitioners. The petitioners contend that they are the owners of land bearing Gat No.310 and respondent No.5 is the owner of land bearing Gat No.346 situated at village Dulechandgaon, Tq. Pathardi, Dist. Ahilyanagar. A river passes through Gat No.310 and 346, thereby both the lands situating towards Northern side and Southern side respectively. Near the Gat No.310 there is Shelke Vasti, where the petitioners' family and other four families consisting 40-50 members are residing and there is also a temple of Lord Khandoba. It appears that the predecessor of petitioners had given an application to respondent No.4 for taking entry with regards to alluvial record for adjoining to village river to the extent of area admeasuring 00 H 38 R. Spot inspection was conducted and after verifying the situation it was opined that the said land was useful for cultivation. Thereafter the alluvial land was allotted to the predecessor of petitioners for cultivation. The measurement as well as the sketch has been drawn by D.S.L.R., Pathardi. Respondent No.5 had then made representation with

respondent No.4 on 03.06.2020 to correct and legalize the flow of village river and to remove the encroachment. Respondent No.5 had pointed out that there is no encroachment as alleged. Respondent No.5 again made online complaint to the Grievance Redressal Portal. Respondent No.2 had then asked respondent No.4 to make appropriate inquiry. The said inquiry was then transferred to another Circle Officer having appropriate jurisdiction. The panchnama has been drawn. It was concluded that due to flow of river area admeasuring 25 to 30 R of the Southern side of Gat No.346 has been damaged. For the first time then respondent No.5 made a statement regarding encroachment made by owners of Gat Nos.310 and 311. Inquiry was conducted, wherein the necessary agreement was entered into to measure the lands at the end of August. Thereafter the proceedings under the Mamlatdar's Courts Act was taken up and respondent No.3 – Sub Divisional Officer has directed respondent No.4 – Tahsildar to make re-inquiry and re-inspection and to remove the encroachment from natural flow of river. The petitioners have also contended that Yamunabai – the applicant, to whom the land was given for cultivation, had made an application and then paid fees of measurement of land. On 14.08.2023 respondent No.4 passed an order cancelling the earlier permission dated 17.05.2018 on the ground of breach of condition No.6. Respondent No.4 had issued in all three notices to Yamunabai to remove the encroachment and interim report was

submitted by Sub Divisional Officer – respondent No.3 on 01.12.2023 regarding the encroachment over the river bed. Again Circle Officer, Akola had prepared a detail report on 16.02.2024 in respect of alleged encroachment on the basis of spot inspection and it was found that there was no encroachment by land owner of Gat No.310. The final report submitted on 04.03.2024 with the office of Collector would show that there is no encroachment, however, respondent No.5 appears to have filed Writ Petition No.5645 of 2024 before this Court, wherein this Court had directed the measurement. A committee was appointed in view of order passed by this Court and it has now submitted the report. In fact, flow of river is natural since ancient time and there is no question of any encroachment. Based upon the order dated 14.08.2023 notices have been issued by respondent No.4 on 30.11.2023. Yamunabai had stated that she has filed an application before the appropriate authority for regularization as well as even before the Hon'ble Minister had directed respondent No.2 to take appropriate action and the matter is pending. Under such circumstance, the order dated 14.08.2023 is illegal, without hearing to Yamunabai. Yamunabai filed Regular Civil Suit No.82/2024 before Civil Judge Senior Division, Ahilyanagar for declaration and injunction. However, the petitioners are not party to the said proceedings. *Status quo* order has been passed in the said matter. The petitioners contend that respondent No.5 started to excavate the

sand from the village river with the help of JCB and Tractors on 05.05.2025, thereby it would change the natural flow of river. According to petitioners, action taken by respondent No.4 is illegal and proper opportunity was not given to petitioners to put forth their say.

3 Learned Advocate for petitioners has taken us through the documents and supported the claim of petitioners.

4 The first and the foremost fact to be noted is that Regular Civil Suit No.82/2024 is filed by one Yamunabai Rajaram Shelke against the State Government for the reliefs of challenging the same report dated 14.08.2023 and notice given to her on 02.11.2023 is not binding on her and for issuance of mandatory injunction. Upon inquiry, learned Advocate for petitioners submits that petitioners are claiming through said Yamunabai. Now, when her suit is pending before learned Civil Judge Junior Division, Ahilyanagar, then question of entertaining the present petition does not arise at all. Yamunabai has challenged the same report and the notice which the petitioners are challenging. The subject-matter is same.

5 It appears from the various documents that respondent No.5 is making claim before revenue authorities in respect of encroachment by mother of petitioner Nos.1 and 2 and grandmother of petitioner No.3. There

are various reports. Though this Court in earlier petition i.e. Writ Petition No.5645 of 2024, which was filed by respondent No.5, had given directions to make inquiry to revenue officers; yet ultimately it has been stated – “Thereafter if any party is aggrieved, it would be at liberty to approach the Civil Court for the redressal of their grievance.” Thus, it can be seen that for limited purpose the said writ was entertained, but then the parties were relegated to their alleged rights to be canvassed on the civil side. Still even after filing the suit by mother of present petitioner Nos.1 and 2 and grandmother of petitioner No.3, petitioners have unnecessarily filed the present writ petition. They have no independent right and further it appears that on 05.02.2025 it was pointed out by learned AGP before trial Court that Yamunabai expired on 24.06.2024 and her heirs have not been brought on record, the application deserves to be set aside. Then on 24.02.2025 an order came to be passed that since last six months the heirs are not brought on record, in such situation the application is filed. Learned Advocate for petitioners submits that the petitioners have now been brought on record.

6 Learned Advocate for petitioners seeks to distinguish the cause of action for the suit and writ petition on the ground that in the suit the prayer clause ‘B’ is for mandatory injunction for allotment for the alluvial land which was cancelled on the basis of report dated 14.08.2023 and respondent No.5

has now come up with the fact that in fact due to change of the direction of river there is encroachment in his land by petitioners.

7 We are not impressed by the said submissions. When the report is the same i.e. 14.08.2023 and the prayer clause 'B' makes the report dated 04.03.2024 which was then available for the challenge in the suit, then the said point cannot be re-agitated. Another important fact to be noted from the documents is that there are disputed questions of fact. Merely because one report is not considered or it is stated to be interim, it cannot be considered under the writ jurisdiction of this Court under Article 226 of the Constitution of India. We reiterate that the petitioners have unnecessarily approached this Court and thereby there is wastage of the judicial hours. We **dismiss** the writ petition by imposing costs of Rs.25,000/- (Rupees Twenty Five Thousand only), to be deposited by petitioners with High Court Legal Services Sub Committee, Aurangabad, within a period of three weeks.

8 Place the matter for compliance on 24.02.2026.

(HITEN S. VENEGAVKAR, J.)

(SMT. VIBHA KANKANWADI, J.)