



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.1932 OF 2026**

1. Sambharao S/o Hanumantrao Bhoyar,
Age:- 55 years, Occ. Agri.,
2. Smt. Nandabai W/o Sambharao Bhoyar,
Age:- 50 years, Occ. Agri.,

Both R/o Hathmali, Tq. Kalamnuri,
Dist. Hingoli.

..Petitioners

Versus

1. The Sub Divisional Officer,
Kalamnuri, Tq. Kalamnuri,
Dist. Hingoli.
2. The Tahsildar,
Tahsil Officer, Kalamnuri,
Tq. Kalamnuri, Dist. Hingoli.
3. The Naib Tahsildar,
Tahsil Officer, Kalamnuri,
Tq. Kalamnuri, Dist. Hingoli.
4. The Circle Officer,
Circle Division, Masod,
Tq. Kalamnuri, Dist. Hingoli.
5. Ganesh S/o Satvawar Bhoyar,
Age: Major years, Occ. Agri.,
R/o Takli Lonar, Tq. Kalamnuri,
Dist. Hingoli.

..Respondents

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Mr. S. S. Gangakhedkar, Advocate for Petitioners.
Mr. S. R. Yadav-Lonikar, AGP for Respondents-State.
Mr. S. V. Deshmukh, Advocate for Respondent No.5.

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**CORAM : S. G. CHAPALGAONKAR, J.
DATED : 25th MARCH, 2026.**

JUDGMENT:-

1. Rule. Rule made returnable forthwith. By consent of parties, matter is taken up for final hearing at the admission stage.

2. The petitioners impugn order dated 27.01.2026 passed by respondent no.1/Sub Divisional Officer, Kalamnuri in File No.2025/Appeal-149, thereby upholding order dated 24.02.2025 passed by respondent no.2/Tahsildar in Mamlatdar Case No.152/2024.

3. The respondent no.5 owns land in Gut No.22. He instituted Rasta Case No.117/2025 before respondent no.2/Tahsildar, Kalamnuri under Section 5(2) of Mamlatdar's Courts Act. It was contention of respondent no.5 that he had approach way from Gut No.1 owned by petitioner. However, petitioners have obstructed its use. On 25.01.2024, spot panchanama was conducted, which records that land Gut No.1 is on Western side of village Hathmali and spread over East-West direction. On Northern side of Gut No.1, Gut No.11 is spread over East-West direction. There was cart way to approach Gut No.22 from Zilla Parishad School. However, at present cotton crop has been cultivated. There is foot way abutting to compound wall of Zilla Parishad School. The statement of petitioner was recorded on same day, wherein he has specifically denied access way from his land. He specified that foot way is maintained for his own approach. The panchanama dated 03.04.2024 shows that 8 feet wide cart way has been created from bandh of Gut Nos.1 and 23 as per direction given by learned Tahsildar vide impugned order dated 24.02.2025.

4. Mr. Gangakhedkar, learned Advocate appearing for petitioners points out that there is nothing to demonstrate pre-existing approach way from petitioner's land to approach land of respondent in Gut No.22. He invited attention of this Court to various measurement maps, which suggests that no pre-existing approach way was available as claimed by respondent no.5.

5. The learned Advocate appearing for respondents, however, submits that order passed by Mamlatdar is already executed and road is cleared from sarbandh of Gut Nos.1 and 23 to approach Gut No.22. He submits that there are affidavits of adjacent land holders, which supports case of respondent no.5.

6. The record indicates that there are affidavits and counter affidavits on aforesaid aspects. There is absolutely no evidence that there was pre-existing way to approach Gut No.22 from sarbandh of Gut Nos.1 and 23. The jurisdiction of Mamlatdar under Section 5 of Mamltadar's Courts Act is limited. It is for him to record his satisfaction that there was pre-existing access way as claimed in proceeding under Section 5 of Act and same has been obstructed within period of six months prior to date of institution of proceeding.

7. In present case, this Court finds that there is no material to arrive at definite conclusion as to existence of customary way as

claimed by respondent no.5. The observations of Mamlatdar nowhere deals with aforesaid aspects of matter. Although Mamlatdar's order records about pre-existing cart way to approach Gut No.22, however, there is no material in support of such observations. In light of aforesaid disputed facts and in absence of cogent evidence to establish pre-existing way, Mamlatdar could not have exercised his jurisdiction under Section 5 of Act and directed creation of cart way from sarbandh of Gut Nos.1 and 23.

8. In result, Writ Petition is allowed in terms of prayer Clause (B).

9. Rule is made absolute in above terms.

10. Needless to state here that, parties are at liberty to establish their claim by filing suit before jurisdictional Civil Court without impeded by observations made hereinabove.

(S. G. CHAPALGAONKAR)
JUDGE