

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5560 OF 2026**

Sitaram Nana Botre

Since decd. through LR's & ors.

..Petitioners

Versus

State of Maharashtra & ors.

...Respondents

Mr. Sumit Kothari, for the petitioners.

Smt. M S Srivastava, AGP for Respondent- State

CORAM: N. J. JAMADAR, J.

DATE : 27th APRIL 2026

P.C.:

1. Heard Mr. Kothari, the learned Counsel for the petitioners.
2. The challenge in this petition is to an order dated 30th March, 2026, passed by the Sub-Divisional Officer, Khed, Rajgurunagar, Pune in Revision Application No. 745/2024 whereby the Revision Application preferred by the petitioner under Section 23(2) of the Mamlatdar's Courts Act, 1906 ('the Act, 1906'), against a judgment and order dated 05th December, 2024 passed by the Tahsildar, Khed under Section 5 of the Act, 1906, came to be dismissed.
3. By the said order dated 05th December, 2024, on the application preferred by the Respondent Nos. 4 to 6 under Section 5 of the Act, 1906, the Tahsildar had returned a finding that, the spot inspection revealed that to access the fields

bearing Gat No. 259, 288, 289, 290 and 291, there was a way through Gat No. 242/1, 242/1/1, 242/2/1, 242/2/2, 243/1, 243/2/A, 243/2/2, 258/2, the Respondent Nos. 4 to 6 herein – the applicants therein,. The petitioners herein – the respondents therein, and the co-respondents had caused an impediment by erecting an iron gate and affixing a board that the said way was their private property. Thus, the petitioners and the co-respondents were directed to remove the said impediment.

4. Being aggrieved, the petitioners preferred a revision before the Sub-Divisional officer. By the impugned order, the Sub-Divisional Officer was persuaded to dismiss the revision. The Sub-Divisional Officer found no fault with the order passed by the Tahsildar.

5. Mr. Kothari, the learned Counsel for the petitioners, submitted that, the impugned orders have been passed in breach of the directions of this Court in an earlier round of litigation. By an order dated 04th September, 2024, in WP/12526/2024, this Court had directed the Tahsildar to decide the application, under Section 5 of the Act, 1906, after providing an effective opportunity of hearing to both the parties and in accordance with law.

6. Upon remand, the Tahsildar, Mr. Kothari would urge, conducted the spot inspection behind the back of the petitioners. No effective opportunity of hearing was provided to the petitioners. The objection raised by the petitioners that, spot inspection was carried out behind the back of the petitioners, was also not considered. Therefore, the impugned order deserves to be quashed and set aside.

7. Incontrovertibly, the petitioners were the parties to the proceeding before this Court in WP/12526/2024, nay at the instance of the petitioners, the application was remitted back to the Tahsildar for afresh determination. The petitioners were thus fully cognizant of the fact that, the proceeding was underway before the Tahsildar. Thus, the petitioners cannot be heard to urge that they were unaware of the proceeding and, behind their back, the Tahsildar conducted the spot inspection.

8. In contrast, the Authorities have recorded that despite notice, the petitioners did not appear. It is pertinent to note that, on the application filed by the petitioners making a grievance that, the spot inspection was carried out behind their back, the Tahsildar has passed an order that, the Village officer has submitted a report on 11th October, 2024 that the petitioners/Respondent Nos. 1 to 4 in the proceeding before the

Tahsildar, had refused to accept the service of notice issued by the Tahsildar.

9. From a bare perusal of the panchnama of the spot inspection, it becomes abundantly clear that, there was indeed a way through the land of the petitioners to access the land of Respondent Nos. 4 to 6 and the petitioners had caused an impediment by erecting an iron gate and affixing a board that the said way was the private property of the petitioners and the co-respondents. The spot inspection panchnama records that, there were marks which indicated the existence of the way. Thus, both the existence of the way and the impediment caused thereto by the petitioners, have been objectively established. The authorities below were, therefore, fully justified in directing the removal of the impediment over the way which was found to be in existence since long.

10. If the petitioners intend to assail the legality and validity of the proceedings before the Tahsildar under Section 5 of the Act, 1906, the petitioners have the remedy of instituting a suit before the Competent Court. Thus, no case for exercise of supervisory writ jurisdiction is made out.

11. The Writ Petition therefore stands dismissed.

[N. J. JAMADAR, J.]