



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 3348 OF 2025

Baburao Shamrao Markad, Age: 50 years, Occ: Cultivator,
R/o Belora, Tq. Pusad, District Yavatmal.

PETITIONER

VERSUS

1. Sub-Divisional Officer, Pusad, Tq. Pusad,
District Yavatmal.
2. Tahsildar, Tq. Pusad, District Yavatmal.
3. Namdeo Kishanrao Gadade, Aged: Major,
Occ: Cultivator.
4. Kalpana Prashant Gadade, Aged : Major,
Occ: Cultivator.
5. Natthuji Narayan Dhale, Aged: Major,
Occ: Cultivator.
6. Shivaji Natthu Dhale, Aged : Major, Occ: Cultivator.
7. Nanda Shivaji Dhale, Aged: Major, Occ: Cultivator.
8. Jambuvantrao Kanhuji Maske, Aged: Major,
Occ: Cultivator.
9. Rangrao Kanhuji Maske, Aged: Major, Occ: Cultivator.
10. Pandurang Sadbarao Jamkar, Aged: Major,
Occ: Cultivator.
11. Natthu Anandrao Jamkar, Aged: Major, Occ: Cultivator.
12. Kapil Tarachand Ferewar, Aged: Major, Occ: Cultivator.

Nos.3 to 12 R/o Belora, Tq. Pusad, District Yavatmal.

RESPONDENTS

Shri Vishwa Gadabail with Shri K.S. Narwade, counsel for the petitioner.

Shri Mohan Vishnu, counsel for the respondent nos.3 to 9, 11 and 12.

Shri S.C. Joshi, Assistant Government Pleader for the respondent nos.1 and 2.

CORAM : PRAFULLA S. KHUBALKAR, J.

DATE : FEBRUARY 26, 2026

ORAL JUDGMENT

RULE. Rule made returnable forthwith. Heard finally with consent of
the learned counsel for the parties.

2. The petitioner challenges the orders passed by the Mamlatdar and the Sub-Divisional Officer granting approach way to the respondent nos.3 to 12 from the land belonging to the petitioner.

3. The controversy arises out of the proceedings initiated by the respondent no.3 to 12 before the Tahsildar/Mamlatdar by which they claimed a right of way to approach their agriculture field through the field belonging to the petitioner. By order dated 16.02.2023, the application was allowed and the right of way was granted to the respondent nos.3 to 12 from land belonging to the petitioner. The petitioner filed revision application before the Sub-Divisional Officer on 19.06.2023 which came to be partly allowed and matter was reminded to the Mamlatdar with a direction to conduct a fresh spot inspection and to consider the issue as to whether there existed any prior approach way from the land. Thereafter, although the matter was to be considered after remand, the respondent nos.3 to 12 filed a fresh application on 28.12.2023, which was entertained by the Mamlatdar as fresh proceedings and by order dated 19.06.2024, the application was allowed thereby granting right of way from the land belonging to the petitioner. Aggrieved by this order, the petitioner preferred revision application before the Sub-Divisional Officer which came to be rejected by order dated 12.06.2025. The petitioner has challenged the orders passed by the Mamlatdar as well as the Sub-Divisional Officer by way of instant petition.

4. Shri Vishwa Gadmail, learned counsel for the petitioner vehemently submitted that impugned orders are passed by the Mamlatdar and the Sub-Divisional Officer without considering the fact that despite remand of the proceedings by the earlier orders, the Mamlatdar entertained fresh application thus nullifying the effect of the earlier order of remand and the directions pursuant thereto. He submitted that the remand order had directed Mamlatdar to consider the issue on the basis of fresh spot inspection after ascertaining whether any approach way existed earlier from the land of the petitioner which was obstructed by the petitioner and without embarking upon any such enquiry, the subsequent application is entertained and decided. He also submitted that the respondent nos.3 to 12 had already filed Special Civil Suit no.18 of 2025 seeking declaration of right of way from the land of the petitioner and since said suit is still pending the entertaining of the application by the Mamlatdar was unwarranted. He also submitted that the application filed by the respondent nos.3 to 12 without complying with mandatory requirement of Section 7 to 11 of the Mamlatdar's Court's Act, 1906 and without disclosing the particulars of cause of action, deserved to be rejected. Further, the right of way claimed through the land belonging to the petitioner on which various trees are already planted would infact be a right of way through the cultivating field of the petitioner and would prejudicially affect the rights of the petitioner.

5. Opposing the petition, Shri Mohan Vishnu, learned counsel for the respondent nos.3 to 12 submitted that the impugned orders are passed on the basis of spot inspection which was conducted by following due procedure. He submitted that the lands belonging to the respondents are surrounded by water and canal as well as Painganga river and only approach way to their lands is from the border of the land of the petitioner bearing Survey no.20. He submitted that the spot inspection report revealed that the petitioner had planted certain trees on the border of his land thereby obstructing the way to the respondents' lands bearing Survey nos.23, 24, 25, 26, 28, 29, 30, 232, 235, 242, 244, 247, 248, 257 etc. He thus submitted that since the approach way was obstructed by the petitioner and in absence of any alternate way, the authorities have rightly passed the impugned orders. By inviting attention to the spot inspection report and the photographs filed by him along with reply, he submitted that due to high level of water in Painganga river and canal, the defendants were constrained to approach their fields by crossing the river and canal by swimming or with the use of wooden planks.

6. While considering the rival contentions of the parties, it has to be seen that the respondent nos.3 to 12 are claiming a right of way for approaching their agriculture fields. In the earlier round of litigation, the Sub-Divisional Officer had directed the Mamlatdar to conduct spot inspection and pass appropriate orders after ascertaining the relevant aspects. The record reveals that the spot inspection was conducted by the Circle Officer, Belora and the spot inspection map placed on record at

Annexure-R1 shows that the land belonging to the respondent nos.3 to 12 is surrounded by water from all directions except from the direction where the land of the petitioner is situated bearing Survey no.20. Another spot inspection report prepared by Talathi at Pages 81 and 82 categorically records that the best possible approach way to the lands of the respondent nos.3 to 12 can be from the northern side boundary of the land of the petitioner bearing Survey no.20. In view of these spot inspection reports, the Mamlatdar and the Sub-Divisional Officer have passed the orders granting right of way to the respondent nos.3 to 12 from the land belonging to the petitioner. Although the contentions are canvassed on behalf of the petitioner regarding consideration of fresh application by the Mamlatdar by ignoring the earlier order of remand, it has to be seen that the same controversy is in fact entertained although on the basis of a fresh application and the orders are passed on the basis of spot inspection reports. As such, even though the order was not passed on the earlier application and the fresh application is considered, in my opinion, this cannot be considered to be a patent illegality vitiating the entire order particularly because the order is passed by considering the relevant aspect including the spot inspection reports.

7. Further, the contention of the counsel for the petitioner that a civil suit is already filed by the respondent nos.3 to 12 which is pending cannot also be ignored and the rights of parties for approach way through the field of the petitioner would be adjudicated in the said civil suit. However, till any orders are passed by the civil Court about right of way of

respondent nos.3 to 12 from the land belonging to the petitioner, there is a necessity to grant right of way to the respondent nos.3 to 12 for approaching their respective fields and hence the impugned orders granting right of way does not need any interference at this stage. It has to be clarified that the parties are entitled to agitate their respective rights in Special Civil Suit no.18 of 2025 in which the plaintiffs have claimed right of way through the land bearing Survey no.20.

8. In view of the above mentioned factual and legal aspects, I am of the firm opinion that the Mamlatdar and the Sub-Divisional Officer have passed the impugned orders on the basis of material available before them including the spot inspection reports and looking to the exigency of the situation, have granted right of way to the respondent nos.3 to 12 from the field belonging to the petitioner.

9. On giving anxious consideration to all the material aspects, I do not find any perversity with the impugned orders. Hence, the writ petition is dismissed with no order as to costs. Rule stands discharged.

(PRAFULLA S. KHUBALKAR, J.)