



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.4599 OF 2026

1. Pradip S/o Kisan Ghute
Age: 65 years Occu.: Agriculture,
R/o. Rui (Dhoki) Tq & Dist. Osmanabad(Dharashiv)
2. Dattatraya S/o Pandharinath Ghute
Age: 78 years Occu.: Agriculture,
R/o. Rui (Dhoki) Tq & Dist. Osmanabad (Dharashiv)
3. Dinkar S/o Yeshwant Ghute
Age: 57 years Occu.: Agriculture,
R/o. Rui (Dhoki) Tq & Dist. Osmanabad (Dharashiv)
4. Vinod S/o Navnath Patil
Age: 55 years Occu.: Agriculture,
R/o. Rui (Dhoki) Tq & Dist. Osmanabad (Dharashiv)
5. Bhalchandra S/o Yeshwant Ghute
Age: 50 years Occu.: Agriculture,
R/o. Rui (Dhoki) Tq & Dist. Osmanabad (Dharashiv)
6. Abhijeet S/o Ajit Ghute
Age: 34 years Occu.: Agriculture,
R/o. Rui (Dhoki) Tq & Dist. Osmanabad (Dharashiv)
7. Dharmendra S/o Rajendra Ghute
Age: 40 years Occu.: Agriculture,
R/o. Rui (Dhoki) Tq & Dist. Osmanabad (Dharashiv)
8. Randhir S/o Kisanrao Ghute
Age: 45 years Occu.: Agriculture,
R/o. Rui (Dhoki) Tq & Dist. Osmanabad
(Dharashiv)
9. Manoj S/o Mahadev Ghute
Age: 42 years Occu.: Agriculture,
R/o. Rui (Dhoki) Tq & Dist. Osmanabad
(Dharashiv)
10. Sandip S/o Pradip Ghute
Age: 28 years Occu.: Agriculture,
R/o. Rui (Dhoki) Tq & Dist. Osmanabad
(Dharashiv)

11. Mahesh S/o Nivrutti Jagtap
Age: 38 years Occu.: Agriculture,
R/o. Rui (Dhoki) Tq & Dist. Osmanabad
(Dharashiv)
12. Vinayak S/o Mahadev Ghute
Age: 40 years Occu.: Agriculture,
R/o. Rui (Dhoki) Tq & Dist. Osmanabad
(Dharashiv)
13. Vijaysinha S/o Narayan Ghute
Age: 80 years Occu.: Agriculture,
R/o. Rui (Dhoki) Tq & Dist. Osmanabad
(Dharashiv)
14. Prakash S/o Devidas Ghute
Age: 40 years Occu.: Agriculture,
R/o. Rui (Dhoki) Tq & Dist. Osmanabad
(Dharashiv)
15. Parasaram S/o Kalyan Ghute
Age: 40 years Occu.: Agriculture,
R/o. Rui (Dhoki) Tq & Dist. Osmanabad
(Dharashiv)

..Petitioners

Versus

1. The State of Maharashtra,
Through Sub-Divisional Officer,
Dharashiv (Osmanabad)
Tq. & Dist. Dharashiv (Osmanabad)
2. The Tahsildar
Dharashiv (Osmanabad)
Tq. & Dist. Dharashiv (Osmanabad)
3. Chakradhar S/o Sushilkumar Ghute
Age: 45 Year, Occu.: Agriculture,
R/o: Rui (Dhoki) Tq & Dist. Osmanabad
4. Shital W/o Vishal Samudre
Age: 45 Year, Occu.: Household &
Agriculture, R/o: H.No. S/236/
Mauli Nagar Kallam Tq.Kallam
Dist. Osmanabad(Dharashiv)
5. Vilas S/o Baliram Ghute
Age: 70 Year, Occu.: Agriculture,

R/o: Rui (Dhoki) Tq & Dist. Osmanabad (Dharashiv)

6. Janak S/o Pandurang Ghute
Age: 70 Year, Occu.: Agriculture,
R/o: Rui (Dhoki) Tq & Dist. Osmanabad
(Dharashiv) ..Respondents

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Mr. S. B. Ghute, Advocate for Petitioners.

Ms. P. V. Diggikar, AGP for Respondent Nos.1 and 2.

Mr. V. D. Salunke, Advocate for Respondent Nos.3 to 5.

Mr. R. V. Naiknaware, Advocate for Respondent No.6.

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CORAM : S. G. CHAPALGAONKAR, J.

RESERVED ON : 17th JULY, 2026.

PRONOUNCED ON : 04th AUGUST, 2026.

JUDGMENT:-

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

2. The petitioners impugns order dated 24.12.2025 and 12.01.2026 passed by Sub Divisional Officer, Dharashiv in Revision Application Nos.2024/ROR/A-629 and 2025/ROR/A-01, thereby setting aside judgment and order dated 22.08.2024 passed by Tahsildar, Dharashiv in File No.2022/ROR/KV-15, thereby directing removal of obstruction in customary way as claimed by petitioners.

3. The petitioners are having their lands in Gut Nos.171, 170, 169, 168, 167, 166, 165, 164, 162, 161, 160, 159, 158, 157, 156, 155, 136, 137, 140 and 143 at village Rui (Dhoki). They initiated

proceeding before Tahsildar, Dharashiv under Section 5 of Mamlatdars' Courts Act contending that respondents, who are owners of land Gut Nos.130 and 7 have created obstruction in use of customary way to approach Rui to Dhoki pandan road. Pursuance to their application, Circle Officer, Dhoki/Yedshi caused inspection of spot and submitted report stating that there is dispute as regards to position of bandh between Gut No.130 and adjoining gut numbers. Accordingly, he opined that position of bandh needs to be fixed from Land Record Department and then pass further orders under Mamlatdars' Courts Act. On 27.09.2021, petitioners filed fresh application before Tahsildar under Section 5 of Mamlatdars' Courts Act contending that respondents have obstructed existing way in month of January 2021 by creating big bandh and ditches. As such existing customary way has been blocked. On 16.02.2022, respondents filed application for amendment and inserted date of obstruction to existing customary way as 01.02.2021. On 17.11.2021, spot panchanama was caused which records that petitioners have claimed way from bandh of Gut Nos.130 and 7. However, unless measurement is carried, way cannot be created. Thereupon, it was agreed by parties to carry joint measurement.

4. It appears that, one more panchanama dated 09.01.2025 caused as per order of Mamlatdar is made, which records that as

per order dated 22.08.2024 passed by Mamlatdar 8 feet way has been opened from bandh of Gut Nos.130 and 7. Apparently, said panchanama is caused in deference to Mamlatdar's order dated 28.08.2024, while Revision Application filed by respondent nos.3 to 5 was pending before Sub Divisional Officer. The Sub Divisional Officer after considering rival contentions allowed Revision Petition and set aside order of Tahsildar. Hence, this Writ Petition.

5. Mr. Ghute, learned Advocate appearing for petitioners submits that Mamlatdar exercised powers under Section 5 of Mamlatdars' Courts Act after satisfying about pre-existing customary way as claimed by petitioners. However, Sub Divisional Officer exceeded jurisdiction while entertaining Revision under Section 23(2) and set aside well reasoned order. In support of his contentions he relies upon observations of this Court in case of *Gaurakshan Sansthan, Murtizapur Vs. State of Maharashtra and others*¹, *Syed Mahaboob Raju Vs. Habibsha Garibsha*² and *Bhagwat Buasaheb Phunde Vs. Rama Srihari Ghule and others*³.

6. Per contra, Mr. Salunke, learned Advocate appearing for respondents justifies impugned order passed by Sub Divisional Officer. He would point out that from Southern side of petitioners'

¹ 2019 (6) Mh.L.J. 473.

² 1968 Mh.L.J. 494.

³ 2022 (3) Mh.L.J. 464.

lands there is pandan road. The petitioners are claiming existing way from bandh of Gut Nos.130 and 7, which was never in existence. There is no material on record to show customary use of bandh as access way to approach Rui to Dhoki road. The Tahsildar never caused inspection on spot. The report submitted by Circle Officer or panchanama drawn by Revenue Authority nowhere depicts existence of way as claimed. Further, application tendered by petitioners was not in the form of suit as contemplated under Mamlatdars' Courts Act. The application was hopelessly barred by limitation. In wake of aforesaid deficiencies, Tahsildar had erroneously allowed application. However, in Revision filed by respondents, Sub Divisional Officer has rightly set aside Mamlatdar's order. In support of his contentions, Mr. Salunke relies upon observations of this Court in case of ***Purushottam Umrao Chavan Vs. The State of Maharashtra and others (Civil Revision Application No.187/2009*** decided on ***16.10.2010***) and ***Gajeram s/o tulshiram Marathe and Anr. Vs. The Sub Divisional Officer and Others (Writ Petition No.5116/2018*** decided on ***29.11.2021***).

7. Having considered submissions advanced by learned Advocates appearing for respective parties, it is necessary to have glance to provisions of Mamlatdars' Courts Act, 1906. Section 5 confers powers upon Mamlatdar who presided over Court referred

as Mamlatdar Court and he is expected to exercise jurisdiction within his territorial limits in accordance with provisions of Sections 6 and 26 of Act. He can direct removal of any impediment, erected otherwise than under due authority of law. Sub-clause (2) of Section 5 empowers Mamlatdar to issue injunction if any impediment is erected or attempted to be erected otherwise than due course of law in use of road or customary way. Sub-clause (3) requires that suit to be filed within period of six months on the basis of cause of action, which shall be deemed to have arisen on date on which impediment, disturbance or obstruction is attempted first. Section 7 contemplates that proceeding before Mamlatdar shall commence by plaint containing particulars of parties, nature and situation of impediment erected, situation of lands which are adjacent to each other, date on which cause of action arose and circumstances leading to such cause of action. The plaint shall accompany with documents and list of witnesses, who are to be summoned. Section 8 contemplates that even formal application can be treated as plaint, however, on enquiry by Mamlatdar with person presenting petition and as per his desire, Mamlatdar shall treat informal application as plaint presented under Section 7. Sections 10 and 11 prescribes that plaintiff to subscribe and verify plaint in presence of Mamlatdar in open Court and then Mamlatdar to endorse plaint to be duly subscribed and verified. Section 12 contemplates that in absence of statement of plaintiff on

oath or where cause of action does not arise within period of six months before presentation of plaint or where plaintiff declines to subscribe or verify plaint shall reject plaint.

8. In light of aforesaid procedure contemplated under Mamlatdars' Courts Act, if record tendered in present case is examined, it is discernible that some of respondents had tendered first formal application before Mamlatdar on 03.02.2021 alleging that respondents who are owners of Gut Nos.130 and 7 have destroyed existing way with aid of JCB Machine and created obstruction in use of customary way. Pertinently, said application sans cause of action, verification of parties, date of alleged obstruction etc..

9. The respondents tendered second application on 27.09.2021 purportedly invoking Section 5 of Mamlatdars' Courts Act. However, said application does not specify cause of action, although it cursorily refers that obstruction is created in Month of January 2021. Even this application does not have verification. Thereafter, on 16.02.2022 amendment was sought which was supported by affidavit of petitioner no.6, whereby first time date of cause of action is brought on record as 01.02.2021. Apparently, after aforesaid compliance, no panchanama has been caused by Tahsildar. The decision of Tahsildar appears to have based on panchanama dated 08.03.2021 and 22.11.2021 caused by Circle

Officer, Yedshi. Apparently, both panchanamas are caused before amendment in application. Even from panchanama dated 15.02.2021 or 17.11.2021 it is not discernible that there was existing customary way as claimed by petitioners.

10. In backdrop of aforesaid factual position, Sub Divisional Officer set aside order passed by Mamlatdar.

11. This Court finds that, in present case, proceeding under Mamlatdars' Courts Act was actually commenced vide application dated 27.09.2021 filed by petitioners. As per amendment in said application cause of action stated to have occurred on 01.02.2021, when respondents created obstruction by using JCB Machine. As such, application filed under Section 5 of Mamlatdars' Courts Act appears was clearly barred by limitation of six months prescribed under Mamlatdars' Courts Act.

12. Although Mr. Ghute, learned Advocate appearing for petitioners endeavours to contend that first application was tendered on 03.02.2021, this Court finds that said application also sans date of cause of action, even it does not have verification or requisite details as contemplated under Section 7 of Mamlatdars' Courts Act. The Tahsildar has not followed procedure contemplated under Section 8 to treat formal application as plaint. No statement of applicants on oath was recorded by Tahsildar. He

had simply called report from Circle Officer which suggests that there is dispute as to position of bandh between lands of petitioners and respondents. Therefore, in real sense, application dated 27.09.2021 can be treated as first application under Section 5 of Mamlatdars' Courts Act, in which cause of action is stated to have occurred in January 2021. Going by such assertion, proceeding instituted by petitioners under Section 5 of Mamlatdars' Courts Act was clearly barred in light of sub-clause (3) of Section 5 of Mamlatdars' Courts Act, as cause of action mentioned in application had occurred atleast 8 months before institution of proceeding. Even otherwise none of spot panchanama relied by petitioners supports their case as to existence of customary way. On other hand, this Court finds that from Southern side of lands of petitioners there is Shiv Rasta, which meets to Rui Dhoki pandan road just near Gavthan. This Court finds that in light of aforesaid observations, Sub Divisional Officer was justified in setting aside order passed by Mamlatdar by exercising his revisional jurisdiction under Section 23(2) of Mamlatdars' Courts Act. Hence, there is no reason to entertain present Writ Petition under Article 227 of Constitution of India.

13. Needless to state here that, petitioners would be at liberty to file Civil Suit for appropriate relief without impeded by present order.

14. With aforesaid liberty, Writ Petition stands dismissed.

15. Rule stands discharged.

(S. G. CHAPALGAONKAR)
JUDGE

Devendra/August-2026