AGK

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.12314 OF 2018

1. **Balasaheb Karbhari Uphade**
2. **Vimal Balasaheb Uphade**
3. **Mangesh Balasaheb Uphade**
4. **Rupali Mangesh Uphade**
5. **Dinesh Balasaheb Uphade**
6. **Snehalala Dinesh Uphade** … **Petitioners**

ATUL GANESH KULKARNI

Digitally signed by ATUL GANESH KULKARNI
Date: 2026.09.29 11:16:14 +0530

Vs.

1. **Tahasildar**, Dindori
2. **Sub-Divisional Officer**, Kalwan
3. **Pandurang Karbhari Uphade**
4. **The State of Maharashtra** … **Respondents**

Mr. Sanjay P. Shinde for the Petitioners.

Smt. S.D. Chipade, AGP for Respondent Nos.1, 2, and 4-State.

Mr. Sachin S. Gite with Mr. Sarfaraj J. Shaikh, Mr. Mahesh Pawar and Mr. Aman Kazi for Respondent No.3.

CORAM : AMIT BORKAR, J.

RESERVED ON : SEPTEMBER 28, 2026

PRONOUNCED ON : SEPTEMBER 29, 2026

JUDGMENT:

1. By filing the present Writ Petition under Articles 226 and 227 of the Constitution of India, the Petitioners are challenging the

legality, validity, and correctness of the judgment and order dated 12 September 2017 passed by Respondent No.2 in Vahivat Revision No.33 of 2017.

2. The Petitioners were the original Opponents in Vahivat Case No.35 of 2015 filed by Respondent No.3 before the Tahsildar, Dindori, District Nashik. In the said proceedings, Respondent No.3 claimed that he had a right of Vahivat over the road in question and sought removal of the alleged obstruction in using the said road. For convenience, the said proceedings are hereinafter referred to as the "said Vahivat case". Agricultural land bearing Gat No.415 situated at Mouje Varkheda, Taluka Dindori, District Nashik was and continues to be the subject matter of the said Vahivat case and the present Writ Petition. The said property is hereinafter referred to as the "subject matter property". In the said Vahivat case, Respondent No.3 claimed removal of the alleged obstruction in the alleged East-West Vahivat road running from Gat No.415 and going towards the North-South village road, as more particularly shown in the Schedule annexed to the said Vahivat case. Thus, the right to use the said road as a Vahivat road is the main dispute between the parties. On 7 December 2015, Respondent No.3 filed the said Vahivat case before the Tahsildar, Dindori seeking removal of the alleged obstruction in the said Vahivat road and seeking permanent injunction against the Petitioners from obstructing his use of the said road. Respondent No.3 contended that he was using the road going from the subject matter property towards the North-South village road for reaching his agricultural field. According to him, the Petitioners had

obstructed his use of the said road and he was required to file the said Vahivat case. The Petitioners appeared in the proceedings and contested the claim by filing their reply. They denied the alleged right of Vahivat claimed by Respondent No.3 as well as the alleged obstruction in the said Vahivat road.

3. Thereafter, the Tahsildar, Dindori conducted a spot inspection of the alleged Vahivat road and prepared a spot inspection Panchanama dated 14 January 2015. The Tahsildar, Dindori who heard and decided the said Vahivat case allowed the same by judgment and order dated 18 March 2017. By the said order, Respondent No.1 directed the Petitioners to remove the alleged obstruction from the said Vahivat road and granted an injunction against the Petitioners. Being aggrieved by the said order passed by Respondent No.1, the Petitioners challenged the same before Respondent No.2 by filing R.T.S. Revision No.33 of 2017. Respondent No.2, by order dated 8 June 2017, granted interim stay to the judgment and order passed by Respondent No.1. Thereafter, the Petitioners filed their written notes of arguments before Respondent No.2 in the said revision. The Sub-Divisional Officer, Kalwan, who heard the said Revision, however, rejected the Revision by judgment and order dated 12 September 2017. Being aggrieved by the said judgment and order passed by Respondent No.2, the Petitioners have approached this Court by filing the present Writ Petition.

4. Mr. Shinde, learned Advocate appearing for the Petitioners, submitted that in Crop Inspection Case No.70/15, the Tahsildar had recorded that the Petitioners were in possession of the subject

matter property. It is submitted that both the proceedings were before the same Tahsildar. Therefore, the Tahsildar was aware that Respondent No.3 was not in possession of the said property. According to the Petitioners, in such circumstances, there was no reason or cause for Respondent No.3 to file the said Vahivat case, as there was no obstruction in any Vahivat road as alleged by him. It was submitted that Respondent No.2 failed to consider that Respondent No.3 had claimed a right of Vahivat in the said Civil Suit in respect of a road which was different from the road claimed by him in the said Vahivat case. Respondent No.3 had not approached the Court with clean hands. He had suppressed material facts from the Court and had obtained the order against the Petitioners by misleading the lower Court. It was submitted that Respondent No.2 relied upon the Panchanama prepared by Respondent No.1, though the said Panchanama was vague and did not show the location or position of the alleged road. It did not show from which portion of the subject matter property the alleged road was passing. According to the Petitioners, Respondent No.2 failed to properly consider the documentary evidence and the pleadings of the parties and, instead, passed the impugned order on the basis of assumptions and surmises. Respondent No.1 gave an opportunity of hearing to both sides and, after considering the evidence placed before him, recorded the following findings: (a) the disputed land was situated within the territorial jurisdiction of the Tahsildar, Dindori and the Tahsildar, Dindori had jurisdiction to hear the Vahivat case and pass the order; (b) the cause of action had arisen on 15 November 2015 and the Vahivat case was filed on

7 December 2015. Therefore, it was filed within six months from the date of the cause of action and was within limitation; and (c) a spot inspection was conducted and a Panchanama was prepared on 14 January 2016. From the spot inspection and Panchanama, it was found that Respondent No.3 did not have any Vahivat road for using the same for cultivation of his land. The Petitioners had ploughed the said Vahivat road and were using that portion for cultivation of watermelon. Marks of the road were found at the spot. On this basis, Respondent No.1 held that the Petitioners had obstructed the easementary right of Respondent No.3.

5. Mr. Gite, learned Advocate appearing for Respondent No.3, submitted that Gat No.415 was the ancestral property of Applicant No.1 and Respondent No.3 and that the said property was partitioned. He submitted that Respondent No.3 had filed a Civil Suit seeking an injunction so that he was not restrained from using the said road. The said suit was filed as Regular Civil Suit No.102 of 2016 before the Civil Court and came to be dismissed on a technical ground. He submitted that from the Crop Inspection Record, it appeared that Respondent No.3 had been using the right in question for all these years. However, when the Tahsildar, Dindori prepared the Panchanama regarding the existence of the road in question, the Petitioners had blocked the said road, which was apparent from the Panchanama. He submitted that Respondent No.3 had no other road for reaching his agricultural land except the road in question. He submitted that the observations made by the Appellate Court in Miscellaneous Civil Appeal No.48 of 2017, that the road claimed in the proceedings

under the Mamlatdar's Courts Act, 1906 and the right of way claimed in the Civil Suit were different, were made during the pendency of the present Petition and were not available before the Sub-Divisional Officer when he passed the impugned order. He, therefore, submitted that the present Writ Petition deserves to be dismissed.

REASONS AND FINDINGS:

6. I have considered the submissions made by Mr. Shinde, learned Advocate for the Petitioners and Mr. Gite, learned Advocate for Respondent No.3.

7. At the beginning, it is necessary to keep in mind that the jurisdiction under Section 5 of the Mamlatdars' Courts Act is a summary jurisdiction. It is provided for giving immediate relief when a person is unlawfully disturbed or obstructed in using a road or customary way. Therefore, the power under this provision is connected with a road or customary way which was existing and with the obstruction caused to such existing road or way. While exercising this power, the Mamlatdar is not expected to make or create a new road. Section 5(2) of the Act gives power to the Mamlatdar, where a person is disturbed or obstructed "in the use of roads or customary ways thereto", to grant an injunction against the person causing such disturbance or obstruction. Section 5(3) provides that "No suit shall be entertained by a Mamlatdar's Court unless it is brought within six months from the date on which the cause of action arose." Section 5(4) provides that, in case of obstruction, the cause of action is considered to have arisen on the

date when the "impediment, disturbance or obstruction, or the attempted impediment or disturbance or obstruction, first commenced." Thus, while considering a road case under Section 5, the Mamlatdar has first to find out which particular road is claimed by the Plaintiff. Thereafter, it has to be seen whether that particular road was in existence and was being used as a road or customary way. Thereafter, it has to be seen whether the Defendant caused obstruction to that road. The date on which such obstruction first started is required to be found for considering whether the proceedings were filed within six months as required under Section 5(3) and Section 5(4).

8. This requirement goes to the basic jurisdiction of the Mamlatdar. A person may require a road for going to his agricultural land. But only because such requirement is there, the Mamlatdar cannot select any convenient route and direct the adjoining landholder to give passage over that route. The proceedings under Section 5 are concerning an existing road or customary way and obstruction to such existing road or way.

9. In a proceeding under Section 5 of the Mamlatdars' Courts Act, 1906, the main question which is required to be seen is whether the person claiming the right is able to show that there was an existing "road or customary way" and whether the other side has caused obstruction to that road or way. The Mamlatdar is not required to create a new road or give a new right of way. The proceedings under Section 5 are concerning an existing road or customary way.

10. Mr. Gite has submitted that the road was being used for many years and that Respondent No.3 has no other road for entering his agricultural land. These submissions are relevant and can be considered. But these facts do not answer the main question under Section 5. The fact that there is no other convenient access does not prove that the particular customary way claimed in the proceedings was existing. The first question remains whether the road claimed by Respondent No.3 was existing and was being used before the alleged obstruction. The distinction between an existing road and a request for a new road has been explained by this court in *Vimal Bhausaheb Nabde vs The Sub Divisional Officer and others* in Writ Petition No. 5074 of 2022 decided on 4 August, 2025. In paragraph 34, the Court observed:

> "There are two regimes regulating right of way prevailing in the State of Maharashtra. One is under Section 5 of the Mamlatdars' Courts Act, which enables a Mamlatdar to order removal of obstruction on an existing road, if the suit is filed within a period of six months from the date of obstruction. Apart from this there is another provision under Section 143 of the Maharashtra Land Revenue Code, under which the Tahsildar is authorized to grant a new road over boundaries of agricultural lands. Whereas, the jurisdiction under the Mamlatdars' Courts Act is to order removal of obstruction over existing roads, jurisdiction under Section 143 of the M.L.R. Code is to grant a new right of way over boundaries of agricultural lands. However, when a suit is filed under Section 5(2) of the Act, the Mamlatdar cannot grant right of through fare over a road which is not previously in existence."

11. The same judgment states in paragraph 35:

> "Right of way over a property of another person is pre-existing civil right of easement. This right is not created for the first time either under the Mamlatdars' Courts Act or under the Maharashtra Land Revenue Code. This is pre-existing right of easement."

12. These observations show the limited nature of the power under Section 5. The Mamlatdar has to examine whether an existing road or customary way was obstructed. The power under Section 5 cannot be used for making a road for the first time.

13. For proceedings under Section 5 concerning a road or customary way, the following principle is required to be kept in mind. There is no one particular document which in every case is required to be produced for proving existence of a road. The entire material has to be considered together. However, where the road is disputed, the record should contain material from which the particular road can be identified. Such material may include revenue maps, cadastral or Gat maps, TILR or DSLRO measurement, relevant revenue entries, spot panchnama, earlier statutory orders concerning the same road, relevant civil court records, photographs and reliable oral evidence. The authority has to consider whether the road existed and whether that existing road was obstructed. The Tahsildar, while conducting the inquiry, shall keep in mind the principle stated in *Shrikrishna Dane*:

> "What the Mamlatdar is required to see is that there exists a way or a customary way in use, to grant the relief."

14. The Tahsildar shall keep in mind the principle stated in *Gopalrao Deshmukh*:

> "For issuing injunction what Mamlatdar under the Mamlatdar's Courts Act has to see is whether there exists any road by which a landholder can have access to his land and whether obstruction was caused to the enjoyment of this road."

15. These observations show that existence of the particular road and obstruction to that road are matters which have to be considered on the basis of the evidence.

16. The revenue maps and land records can be relevant material for finding whether such road was existing. The following documents may be relevant: (i) Village map. (ii) Cadastral map. (iii) Gat map or measurement map. (iv) Map prepared by the District Superintendent of Land Records or TILR/DSLRO. (v) Record showing a road, shivrasta, pandhan, cart road or customary way. (vi) 7/12 extracts, where the entries or area description indicate the existence of a road. (vii) Other revenue records showing the road as a separate strip or passage.

17. In *Gopalrao Baliramji Deshmukh v. Sopan Gulabrao Deshmukh* in Writ Petition No. 4806 of 2020 decided on 30 July 2021, this court considered the panchnama, the sketch map prepared by the Tahsildar, the 7/12 extract and the oral evidence together. The Court noticed that the 7/12 extract showed the total area of the concerned Gat number after excluding the road. This was considered as supporting material regarding existence of the road. Therefore, merely producing a 7/12 extract may not in every case be sufficient to finally establish the road. But if the entry in the 7/12 extract is supported by the map and other material, it can become an important piece of evidence.

18. The spot panchnama can have important value in a proceeding under Section 5. A properly conducted spot inspection and panchnama may show the physical existence of the road, its approximate width and direction, the Gat numbers through which it passes, signs showing its earlier use and whether persons or agricultural vehicles can use it. It can show where the alleged obstruction is situated and what is the nature of that obstruction.

19. In *Dattatray Kondaji Dongre v. Dattatray Dagadu Lohate i*n Writ Petition No. 661 OF 2024 decided on 13 March 2024, this court considered the finding regarding existence of a motorable road where the Circle Officer had prepared a panchnama in the presence of independent panchas. The Court accepted that the findings recorded by the authorities were based upon material in the form of the panchnama. The presence of the opposite party at the time of the spot inspection and preparation of the panchnama can be relevant. In *Gopalrao Deshmukh*, the Court noticed that the petitioners were present when the panchnama was prepared.

20. A survey or measurement map prepared by the competent Land Records authority can be important evidence. In *Chhagan Sarjerao Garad vs The State Of Maharashtra,* Writ Petition No. 632 of 2024 decided on 6 February, 2024, there was a map prepared by the Deputy Superintendent of Land Records. This Court considered that map along with the other material and accepted the finding regarding the existence of a road passing between the concerned Gat numbers. Therefore, where the main dispute is about the exact place through which the road is passing, a certified measurement map can provide better assistance than only oral statements that

there was a road at the place.

21. An earlier order passed under Section 143 of the Maharashtra Land Revenue Code can become relevant where it concerns the same road. In *Anandrao Ishwar Dhyagude v. Bhaganna Laxman Pandhre* in Writ petition No. 12392 of 2022 decided on 23 January 2024, the Tehsildar had earlier passed an order under Section 143 of the Maharashtra Land Revenue Code declaring existence of the road. This court held:

> "Once statutory authority grants declaration of existence of road, such declaration is binding on all the parties."

22. This Court held that existence of such order was sufficient for arriving at a finding regarding existence of the road and it was not necessary to produce material for proving existence of the road. However, such order must relate to the same road and the same location. An order concerning some other road cannot be treated as proof of the road which is in dispute in the proceedings.

23. Earlier proceedings before revenue or other authorities can be relevant, particularly where the same road was considered and recognized earlier. Such material may include earlier Section 143 proceedings, orders passed by the Tahsildar or Sub-Divisional Officer, measurement proceedings, road demarcation proceedings, proceedings regarding encroachment and government records recognizing a shivrasta or public road. But the earlier proceeding has to be connected with the road which is in dispute. If the earlier proceeding relates to another road or another route, such proceeding cannot be relied upon for establishing the road in the

present case.

24. The judgment or decree of a Civil Court, report of the Court Commissioner or map prepared in a civil proceeding may be relevant where the same property and the same road or way were involved. In *Shrikrishna Sheshrao Dane and anr vs Vasantrao Ramrao Tayde and another* on 20 March 2017, the Court considered the plaint map and the report of the Court Commissioner along with the oral evidence and found that existence of the way had been established. The value of such earlier material would depend upon the facts of that proceeding. It would be necessary to see whether the parties had an opportunity to contest the matter and whether the document or map in fact relates to the same route which is now claimed before the Mamlatdar.

25. Photographs, old maps, revenue records and statements of witnesses can be considered for finding whether the road was being used for a long period. This is relevant because Section 5 concerns an existing road or customary way. It is not necessary in every case that the road should be a constructed tar road. A village pathway, agricultural access road, cart road or other established passage may constitute a road or customary way depending upon the evidence. This court has stated that what the Mamlatdar has to see is whether: “there exists a way or a customary way in use” and, if such way exists, whether obstruction has been caused to it.

26. Oral evidence can be given and considered in such proceedings. The witnesses may give evidence about how long the

road was in existence, who was using it, where the road started and ended, its approximate width, whether agricultural vehicles were using it, whether the claimant was regularly using it and when the alleged obstruction was caused. However, oral evidence has to be considered along with the other material. Where the statements of the witnesses are supported by the physical condition at the spot, revenue records, maps and panchnama, such evidence can be relevant. In *Gopalrao Deshmukh*, the Court considered the evidence of the witnesses along with the panchnamas, sketch map and 7/12 extract.

27. Photographs showing an old track, wheel marks, openings in the boundary, road surface, existing passage, obstruction or leftover of an earlier road can provide supporting material. However, a photograph shows the condition of the place only on the date when it was taken. It may not establish that the road was existing for a long period before the alleged obstruction. Therefore, photographs would be more relevant when they are considered along with the panchnama, survey or measurement map and the evidence of witnesses.

28. Where the alleged road is a government road, village road or a road which was developed under a government scheme, the relevant government records can be important. Such records may include Gram Panchayat records, Village Form records, PWD records, Zilla Parishad records, road development records, sanctioned road plans, records concerning Pradhan Mantri Gram Sadak Yojana and government maps. In *Chhagan Sarjerao Garad*, this Court considered material showing existence of a road which

was upgraded under the Pradhan Mantri Gram Sadak Yojana.

29. The evidence in a proceeding under Section 5 should establish two different things. First, that the particular road or customary way was in existence. Second, that the other party caused obstruction to that existing road or customary way. A person cannot approach the Mamlatdar under Section 5 merely because he requires a convenient access to his agricultural land and seek creation of a new road over another person's land. The power under Section 5 is to deal with obstruction to an existing road or customary way. It is not a power to create a new road. Therefore, while deciding such proceedings, the Mamlatdar has to first identify the particular road claimed by the person, consider whether that road was existing and being used, and thereafter consider whether the opposite party has obstructed that particular road. The evidence regarding the road and the evidence regarding obstruction have to be considered and thereafter together, on the basis of the entire material available on record.

30. This court in *Shrikrishna Sheshrao Dane*, in paragraph 6, has stated as under:

> "Sub-Section (2) of Section 5 of the Mamlatdar Courts Act, 1906, empowers the Mamlatdar to pass an order of injunction against the persons prohibiting the use of road or customary way and to remove any obstruction or impediment created therein. What the Mamlatdar is required to see is that there exists a way or a customary way in use, to grant the relief."

31. Thereafter, the Court considered the plaint map, the report of the Court Commissioner and the oral evidence and recorded in

paragraph 7:

> "After going through the evidence of this witness PW-4, the plaint map, the report of the Court Commissioner at Exh.67, I find that the existence of way through Gat Nos. 12 and 13 to approach Gat Nos. 10 and 11 has been established."

32. Thus, this decision shows that the particular road or way has to be identified from the material placed before the authority and its existence has to be established. Merely saying that some access is available or that some road is there would not be sufficient. The same principle is found in *Gopalrao Baliramji Deshmukh*. In paragraph 9, this court considered the panchnama, sketch map, 7/12 extract and oral evidence. The Court noticed that the panchnama showed existence of the road, the Tahsildar had prepared a sketch map showing the direction of the road and the 7/12 extract supported its existence. The Court observed that this material "clearly indicates the existence of road." In paragraph 10, the Court stated:

> "For issuing injunction what Mamlatdar under the Mamlatdar's Courts Act has to see is whether there exists any road by which a landholder can have access to his land and whether obstruction was caused to the enjoyment of this road."

33. In paragraph 11, the Court observed:

> "The argument that, it was not necessary for the Mamlatdar to again visit the spot and draw panchanama was totally uncalled for, cannot be accepted. Mamlatdar is required to pay visit to the spot and draw panchanama by virtue of Section 19(2) of the Mamlatdar's Courts Act."

34. This decision is relevant because the finding regarding the road was not based only on the panchnama. The panchnama, sketch map, revenue record and oral evidence were considered together.

35. Section 19(2) of the Act shows the manner in which the inquiry can be made by the Mamlatdar. After giving proper notice to the parties and, where required, in their presence, the Mamlatdar can call and examine other persons as witnesses. He can call for documents which have not been produced by either side where such documents are necessary in the interest of justice. He can personally inspect the property in dispute. After such inspection, he is required to record a memorandum of the relevant facts noticed at the spot. Such memorandum becomes part of the record. Therefore, when the identity, location or actual existence of the road is disputed, the spot inspection becomes relevant. The spot has to be examined with reference to the case made in the plaint. As far as possible, the route should be shown by proper measurement or sketch. Its starting point, ending point, direction and the lands through which it passes should be understood from the record. The place and nature of the alleged obstruction should be shown.

36. The following material is relevant and may be considered while deciding proceedings under Section 5 of the Mamlatdars' Courts Act:

(i) The plaint and its description of the particular road or customary way, including its starting point, ending point,

direction, width and the lands or Gat numbers through which it is claimed.

(ii) Village map, cadastral map, Gat map and other revenue maps showing the existence and location of the road.

(iii) Measurement maps or reports prepared by TILR, District Superintendent of Land Records or other competent Land Records authority.

(iv) 7/12 extracts and other revenue records showing the road, shivrasta, pandhan, cart road or customary way.

(v) Earlier orders passed under Section 143 of the Maharashtra Land Revenue Code or other statutory proceedings concerning the same road.

(vi) Spot panchnama recording the physical existence, direction, width, location and condition of the road and the nature and place of the alleged obstruction.

(vii) Sketch or map prepared during the spot inspection showing the road with reference to the boundaries of the concerned Gat numbers.

(viii) Photographs or other material showing the physical condition of the road, obstruction, cultivation, track marks or other signs of its earlier use.

(ix) Oral evidence regarding the existence of the road, its period of use, the persons using it, the manner of use and the date on which the alleged obstruction was first caused.

(x) Documents and evidence showing long-standing use of the particular road or customary way.

(xi) Government or local authority records, including Gram Panchayat, village forms, Zilla Parishad, Public Works Department or sanctioned road plans, wherever relevant.

(xii) Earlier civil Court proceedings, judgments, orders, maps or Commissioner's reports concerning the same road, property or route.

(xiii) Documents showing the possession and cultivation of the concerned Gat numbers, including crop inspection records, where relevant to the identity or use of the road.

(xiv) Evidence relating to the exact date on which the obstruction or attempted obstruction first commenced, for determining the limitation under Section 5(3) and Section 5(4) of the Act.

(xv) Any other relevant documentary, oral or physical evidence which helps in identifying the particular existing road or customary way and the alleged obstruction to that road.

37. In the present case, Respondent No.3 claims an East-West Vahivat road from Gat No.415 towards the North-South village road. The Petitioners dispute existence of such road. They say that the road claimed by Respondent No.3 before the Civil Court was different from the road claimed before the Mamlatdar. Respondent No.3 disputes this submission and says that the road in question is

the same road which he has been using for going to his agricultural land. Thus, the dispute is not merely regarding access to the agricultural land. The identity of the road is disputed. Unless the road claimed before the Mamlatdar is first identified, it would not be safe to hold that the Petitioners have obstructed that road.

38. The Petitioners have relied upon Crop Inspection Case No.70/15 and the finding recorded therein that they were in possession of the subject property. I do not find that such finding can bring the proceedings under Section 5 to an end. Possession of Gat No.415 and use of a road for reaching an agricultural field are two different things. It is possible that one person is in possession of land and another person claims to use a road passing through or along that land. Therefore, the finding regarding possession in the Crop Inspection Case is relevant material. But it cannot prove that Respondent No.3 had no existing road or customary way. At the same time, the submission of the Petitioners cannot be ignored. Their case is that the same Tahsildar had dealt with both proceedings. Therefore, the Crop Inspection Record and the findings in that proceeding are relevant documents and should be considered. It has to be seen from the original record whether those documents give any information regarding the identity of the road, possession of the parties and the manner in which Respondent No.3 was reaching his agricultural land. This has to be decided from the record.

39. The submission that Respondent No.3 had claimed a different road before the Civil Court is relevant. If the two

proceedings concern different roads, a statement or finding concerning one road cannot establish existence of another road. Therefore, the two roads have to be compared by examining the plaint, maps, boundaries, Gat numbers and reliefs claimed in both proceedings. Respondent No.3 has relied upon Regular Civil Suit No.102 of 2016 and has stated that the suit was dismissed on a technical ground. If the suit was dismissed on a technical ground, such dismissal cannot be considered as a finding that the road exists. At the same time, it cannot be treated as a finding that the road does not exist. Therefore, the actual judgment and order in that suit has to be examined to know what was decided and what was not decided.

40. The same position applies to Miscellaneous Civil Appeal No.48 of 2017 referred to by Mr. Gite. Respondent No.3 states that the decision in that appeal was delivered during pendency of the present Petition, and it was not available before Respondent No.2 when the impugned order dated 12 September 2017 was passed. Respondent No.2 cannot be blamed for not considering a decision which was not available before him at that time. However, in the fresh inquiry after remand, the certified copy of that decision can be produced before the Tahsildar. If the decision concerns the same parties or way, its effect will have to be considered after giving both sides opportunity to make their submissions. If it concerns a different road, it cannot be used for proving the road involved in the present proceedings.

41. The Petitioners have submitted that the panchnama is vague. This submission requires consideration. The order of Respondent

No.1 states that marks of a road were found at the spot and that the Petitioners had ploughed the road and were using that portion for cultivation of watermelon. However, from the material placed before this Court, it is not clear how those marks were connected with the particular East-West road described in the plaint. The starting point, ending point, width and exact position of the alleged road with reference to the Gat boundaries are not shown.

42. In the present case, the Tahsildar should find out whether there is any earlier order under Section 143 of the Maharashtra Land Revenue Code concerning the disputed road in Gat No.415. If such order exists, its certified copy, map and connected record should be called for and considered. If there is no such order, the claim will have to be considered on the basis of other evidence available on record. The revenue records require proper consideration. These may include the village map, cadastral map, Gat map, measurement map, maps prepared by TILR or District Superintendent of Land Records, revenue entries showing road, shivrasta, pandhan or cart road, 7/12 extracts and other village or government records. A 7/12 extract alone may not finally decide the issue. But if its entry corresponds with the map, measurement and physical condition of the land, it can become relevant supporting evidence. The spot inspection has to be done in a proper manner. If the road is still visible, its approximate width, direction, starting point, ending point, adjoining Gat numbers, boundary position, physical marks of use and place of alleged obstruction should be recorded. If wheel marks, an old passage, openings in the boundary, remains of road or other physical signs

are found, they should be mentioned. If the route is no longer visible because the land has been cultivated, that fact should be recorded. In such a situation, older records and other evidence will have to be considered.

43. Both sides should receive notice of the spot inspection and should be permitted to remain present. Independent panchas may be associated. The sketch prepared at the spot should, as far as possible, show the position of the road in relation to the Gat boundaries. If the exact route or boundary is disputed, assistance of the competent Land Records authority for proper measurement may be considered.

44. Oral evidence has to be considered in this background. Witnesses may speak about the existence of the road, the period for which it was used, the persons who used it, the direction of the road, the manner of its use and the time when the alleged obstruction was first caused. Such oral evidence, however, has to be checked with the physical and documentary material. The statement of an interested witness cannot be treated as conclusive only because it supports one party. At the same time, a witness cannot be rejected only because he belongs to the same village. The entire evidence has to be considered. Photographs, if available, may be considered. They may show the condition of the spot, track, obstruction, cultivation over the alleged road, wheel marks, boundary openings or remaining signs of earlier use. But photographs normally show the condition of the place when they were taken. They may not establish how many years the road existed before that date. Therefore, photographs have to be

considered along with the panchnama, maps, revenue records and oral evidence. Government or local authority records, if available, should be considered. If the alleged road is shown in Gram Panchayat records, village forms, Zilla Parishad records, Public Works Department records or any sanctioned road plan, such records may be relevant for deciding the identity and existence of the road. In *Chhagan Sarjerao Garad*, the material regarding the existing road and the Land Records map was considered together in the background of subsequent development of that road.

45. Therefore, there is no single document which in every case is compulsory for proving the existence of a road. The whole material has to be considered together. But where the identity of the road is disputed, it would not be safe to decide the matter merely on a general statement that "there are marks of road" or that the claimant has no other access. The evidence has to relate to the particular road which is the subject matter of the proceedings.

46. There is one more difficulty in the present matter which requires consideration. Paragraph 5 of the material placed before this Court refers to the spot inspection panchnama dated 14 January 2015, whereas paragraph 10 refers to the same panchnama as dated 14 January 2016. The Vahivat case was filed on 7 December 2015. Therefore, the date mentioned in paragraph 5 cannot be accepted without seeing the original record. It appears to be an inconsistency in the material placed before the Court. However, this Court cannot assume which date is correct. The panchanama has to be examined by the Tahsildar. If the correct date is 14 January 2016, the same should be recorded. If the

original document bears some other date, the same should be clarified in the order. This difference in date is relevant because the date of the alleged obstruction and the steps taken thereafter are part of the inquiry under Section 5. Limitation cannot be decided only by repeating the date stated in the plaint. The authority has to find out when the disturbance or obstruction to the particular road first commenced. For this purpose, the evidence of the parties, panchnama, complaints, notices, applications, revenue records and other relevant material can be considered.

47. Section 19(1)(c) requires the Mamlatdar to examine:

> "(1) whether the plaintiff or any person in his behalf is in possession or enjoyment of the property or use claimed;
>
> (2) whether the defendant is disturbing or obstructing or has attempted to disturb or obstruct him, in such possession or enjoyment ;
>
> (3) whether such disturbance or obstruction, or such attempted disturbance or obstruction, first commenced within six months before the suit was filed."

48. In my view, the orders passed by the authorities below do not contain a clear finding about the identity of the road. This is particularly so because the Petitioners have contended that the road referred to in the civil proceedings was different from the road claimed before the Mamlatdar. There is no clear connection between the road described in the proceedings and the physical road said to have been found at the spot by reference to a proper map or measured position. Therefore, the finding regarding obstruction is based upon a matter which requires examination.

49. I am unable to accept the submission of the Petitioners that the entire claim of Respondent No.3 must fail merely because the Petitioners were found to be in possession of Gat No.415. As stated, possession of land and use of a road are different matters. At the same time, the submission of Respondent No.3 that he had been using the road for a long period and that there was no other road cannot be treated as sufficient proof. The statute requires proof of existence and use of the particular road or customary way and obstruction to that particular road. Therefore, the submissions made by both sides have to be considered to the extent stated above. The Petitioners are justified in saying that the identity and exact location of the road require examination. Respondent No.3 is correct to the extent that absence of a formal government road entry or the fact that the Petitioners are in possession of the agricultural land cannot defeat a claim if the evidence proves an existing customary way. These questions have to be decided on the evidence.

50. In these circumstances, I do not find it proper to finally decide the dispute merely by choosing between the two versions placed before the authorities. The dispute involves questions regarding existence, identity, location, earlier use and obstruction of the alleged road. The Mamlatdar is the authority which has to make this inquiry in the first instance. The Act gives the Mamlatdar power to inspect the property and call for necessary evidence. This court has noticed the difficulties arising in such proceedings under the Mamlatdars' Courts Act. In paragraph 33 of *Vimal W/o Bhausaheb Nabde*, it is observed:

> "Of late many petitions are coming up before this Court arising out of provisions of Mamlatdars' Courts Act. Whereas the provisions of Mamlatdars' Courts Act are statutory provisions, which are meant to give immediate urgent reliefs to villagers with respect to the matters covered under Section 5 of the Act, it is found that the procedural requirements of the Act are seldom followed."

51. The Court observed:

> "Most of the times, the matters are required to be remanded back to decide the case by following procedural formalities. These procedural formalities are held to be mandatory."

52. This observation is relevant to the present matter because the question before this Court is whether the inquiry made by the authorities below was complete enough to support the order passed against the Petitioners. On the material available, I find that the answer has to be in the negative. Respondent No.2 confirmed the order of Respondent No.1 without identifying the particular road with reference to the material on record. The specific objection of the Petitioners regarding the different roads claimed before the Civil Court and before the Mamlatdar required a separate finding. The decision in Miscellaneous Civil Appeal No.48 of 2017 can now be considered in the fresh inquiry, subject to its contents and relevance. The difference regarding the date of the panchnama requires verification from the original record. I do not propose to record any final finding at this stage that the road exists or that it does not exist. Such a finding on the present material would mean deciding disputed facts without proper inquiry. In my view, the proper course is to set aside the orders and send the matter back to the Tahsildar, Dindori for fresh inquiry. The remand

is not intended to permit Respondent No.3 to make an entirely new case. The inquiry shall remain confined to the road and relief claimed in the proceedings. The Petitioners shall be entitled to rely upon the documents and objections which are relevant to the identity, existence, use and alleged obstruction of that road.

53. While making the fresh inquiry, the Tahsildar shall consider the material questions arising under Sections 5 and 19 of the Act. In particular, it shall be examined whether the particular East-West road described by Respondent No.3 and shown as approaching the North-South village road was in existence before the alleged obstruction; where exactly the road was situated; through which Gat numbers or boundaries it passed; whether Respondent No.3 was using that particular road; whether the Petitioners caused obstruction to that particular road; and when such obstruction first commenced. For this purpose, the Tahsildar shall consider, wherever relevant from the record, the village map, cadastral map, Gat map, TILR or DSLRO measurement map, 7/12 extracts, revenue records showing road, shivrasta, pandhan or customary way, previous orders under Section 143 of the Maharashtra Land Revenue Code, earlier revenue orders concerning the same road, the judgment and record of Regular Civil Suit No.102 of 2016, the judgment or order in Miscellaneous Civil Appeal No.48 of 2017, panchnamas, oral evidence, photographs and other relevant material. If the exact location of the road is disputed, the Tahsildar shall consider obtaining proper measurement from the competent Land Records authority so that the route can be identified with reference to the boundaries of Gat No.415 and adjoining Gat

numbers. If such measurement is undertaken, both sides shall be given notice and an opportunity to remain present. The map or measurement report shall form part of the record and both sides shall be permitted to make their submissions upon it.

54. The Tahsildar shall conduct a fresh spot inspection after giving proper notice to both sides. The spot panchnama shall contain sufficient details for identifying the alleged road. As far as possible, it shall mention the direction, width, starting point, ending point, adjoining Gat numbers, physical signs of earlier use and the exact place and nature of the alleged obstruction. The sketch prepared at the spot should correspond with the description given in the panchnama. The Tahsildar shall verify the panchanama relied upon in the proceedings and record its correct date. The difference between 14 January 2015 and 14 January 2016 shall not remain unexplained. The issue of limitation shall be considered independently. The date of 15 November 2015 stated by Respondent No.3 as the date of cause of action shall be examined with reference to the oral and documentary evidence. The question to be decided is when the alleged obstruction to the particular road first commenced. Only after deciding this question can the requirement of Section 5(3) be properly considered. The Petitioners shall be permitted to produce Crop Inspection Case No.70/15 and the relevant Crop Inspection Record. The Tahsildar shall consider what bearing those records have upon possession of Gat No.415, use of the road and identity of the alleged route. The said record shall not be treated as conclusive in favour of either party without examining its actual contents and relevance.

55. Respondent No.3 shall be permitted to produce the documents relied upon by him to show long-standing use of the road. If he relies upon the fact that there is no alternate road, that circumstance may be considered. However, absence of an alternate road cannot result in creation of a new road under Section 5. The existing road or customary way has first to be established. The evidence of witnesses shall be considered along with the maps, revenue records and physical evidence. If any witness states that the road was being used for several years, the Tahsildar shall consider whether such statement is supported by and is consistent with the documentary material. The final finding should be based upon the entire material and not upon one document or one statement considered separately.

56. The Tahsildar shall keep in mind the difference between the jurisdiction under Section 5 of the Mamlatdars' Courts Act and the power under Section 143 of the Maharashtra Land Revenue Code. If the material shows that Respondent No.3 is seeking a route which was not previously existing, relief under Section 5 cannot be granted merely because access to his land is required. If, however, an existing road or customary way is proved and obstruction to that existing route is proved within the statutory period, the claim shall be considered in accordance with Section 5.

57. The above directions are not intended to decide what conclusion the Tahsildar should reach. This Court is not recording any final finding regarding the existence or non-existence of the disputed road, the alleged right of Vahivat, the alleged obstruction or the issue of limitation. These matters are left open for fresh

consideration on the basis of the evidence. I find that the judgment and order dated 12 September 2017 passed by Respondent No.2 in Vahivat Revision No.33 of 2017 cannot be sustained in its present form. The order dated 18 March 2017 passed by Respondent No.1 requires reconsideration because the basic factual questions concerning the identity and existence of the road have not been examined with sufficient clarity for a proceeding under Section 5.

58. The Petition deserves to be allowed to the above extent. The impugned orders are required to be set aside, and the matter is required to be remanded to the Tahsildar, Dindori for fresh inquiry in accordance with law. Both sides shall be given reasonable opportunity to produce documents, lead evidence and make their submissions. The Tahsildar shall decide the matter independently on its own merits. The observations made in this judgment, except the legal parameters governing the inquiry, shall not be treated as a finding in favour of either party.

59. For the reasons stated above, I am satisfied that remand of the matter is necessary in the interest of justice. The matter shall be decided afresh by the Tahsildar after following the above parameters and after considering all relevant material produced by both sides.

60. In view of the foregoing discussion and for the reasons recorded hereinabove, the following order is passed:

(i) The Writ Petition is allowed;

(ii) The judgment and order dated 12 September 2017 passed by Respondent No.2 in Vahivat Revision No.33 of

2017 is quashed and set aside;

(iii) The judgment and order dated 18 March 2017 passed by Respondent No.1 in Vahivat Case No.35 of 2015 is quashed and set aside;

(iv) Vahivat Case No.35 of 2015 is restored to the file of the Tahsildar, Dindori for fresh inquiry and decision in accordance with law and in the light of the observations made in this judgment;

(v) The Tahsildar shall give proper notice to both sides and permit them to produce relevant documents and evidence. The Tahsildar shall conduct fresh spot inspection wherever necessary. If the identity or location of the road is disputed, appropriate measurement or map from the competent Land Records authority shall be considered;

(vi) The Tahsildar shall record specific findings regarding the existence and identity of the alleged road, its prior use, the alleged obstruction and the date on which such obstruction first commenced;

(vii) The Tahsildar shall verify the panchanama and clarify the discrepancy regarding its date shown as 14 January 2015 and 14 January 2016;

(viii) The Tahsildar shall decide the proceedings independently on the basis of the material and submissions placed before him and shall not be influenced by the conclusions recorded by Respondent No.1 or Respondent

No.2 which have been set aside by this Court;

(ix) The fresh inquiry shall, as far as possible, be completed within four months from the date of receipt of the record and a copy of this order;

(x) All contentions of the parties on merits are kept open for consideration by the Tahsildar in the fresh inquiry;

(xi) There shall be no order as to costs.

(AMIT BORKAR, J.)