

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CIVIL APPLICATION NO. 12600 of 2025

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ZALA DEVENDRASINH RANJITSINH & ORS.
 Versus
 MAMLATDAR & ORS.

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Appearance:

MR VAIBHAV N SHETH(5337) for the Petitioner(s) No. 1,2,3
 MR JAY TRIVEDI, AGP for the Respondent(s) No. 1,2
 NOTICE SERVED BY DS for the Respondent(s) No. 1,2
 REFUSED SERVED (N)(10) for the Respondent(s) No. 3

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CORAM: HONOURABLE MR. JUSTICE DIVYESH A. JOSHI

Date : 01/05/2026

ORAL ORDER

1. By way of present petition under Articles 226 and 227 of the Constitution of India, the petitioners have sought for the following main relief/s:

“(A) This Hon'ble Court may be pleased to admit and allow the present petition;

(B) This Hon'ble Court may kindly be pleased to issue a writ of mandamus or a writ of certiorari or a writ in the nature of mandamus or certiorari or an appropriate writ, order or direction thereby quashing and setting aside the impugned order dated 12.03.2025 passed by respondent no.2 Learned Deputy Collector, Bayad in the Revision Application being No. Mam. Court/Revision/Appeal/Case No.25/2024 (Annexure - D colly.) filed by petitioners original defendants/opponents under the provisions of section 23(2) of the Mamlatdars' Courts Act, 1906 in rejecting the same and

further be pleased to quick and wide the impugned order dated 03.08.2024 passed by respondent no Learned Mamlatdar, Bayad below application/mit being No. MCourt/ARV/15/2024 (Annexure-C) filed by respondent no original plaintiff under the provision of section 5(2) of the Act which is partly allowed and is confirmed, in so far as direction to remove the obstruction made by petitioners by opening the lock and removing the iron door placed on the main gate in the agricultural land bearing S. No. 108 belonging to petitioners for egress and ingress to the agricultural land bearing Khata No. 131 and S. No. 112 situated at Mouje Village Gotapur, Taluka Bayad belonging to the respondent no.3 and for taking tractor and other agricultural equipment by road passing from Gabat to Gotapur is concerned in the interest of justice;"

2. Heard learned advocate Mr. Vaibhav Sheth for the petitioners and learned AGP Mr. Jay Trivedi for respondent Nos. 1 and 2.

3. Learned advocate Mr. Sheth has referred the facts of the case and submitted that the respondent no.3 - original plaintiff had initially submitted an application dated 21.05.2024 to the office of the Mamlatdar, Bayad for removal of the obstructions created by the petitioners herein for smooth usage of the disputed way, which they were using since last many years to enter their house and agricultural fields. It was mainly contended that there is a 'pakka' road from Mouje gabat to Semaliya Ratanpur Kampa and towards the southern side, there is a 'pakka' road towards Gotapur-Semaliya and the

agricultural land of the petitioners is situated on the front side of the agricultural land of respondent no.3. It is mainly alleged that the disputed road passes through S. No. 108 (Old S. No. 114/1) from agricultural land of petitioners and leads to agricultural land of respondent no.3 situated at Narseda Kampa which is main road and the same is obstructed.

4 Learned advocate Mr. Sheth submits that thereafter, the respondent no.3 instituted a suit under Section 5 of the Mamlatdars' Court Act on 13.06.2024 before the Mamlatdar, Bayad seeking removal of obstruction on the disputed road created by petitioners herein, inter alia, contending that the petitioners had dug the disputed road with JCB machine on 25.09.2023 and the obstruction was created and after representation was made to the concerned authority by respondent no.3, the same was restored and then, the petitioners had put an iron gate and applied lock on the main entrance itself and thereby once again created impediments in smooth usage of the disputed road by the respondent No.3.

5. Learned advocate Mr. Sheth submits that as against the aforesaid application/suit filed by respondent no.3 herein, the petitioner no.1 made 2 representations dated 26.06.2024 to respondent no.1 authority bringing to its notice that the house of the respondent no.3 is constructed and situated on

Gauchar land belonging to Government and that the respondent no.3 is doing the business of liquor and the truck filled with liquor passes through the disputed road and that there is another alternative way from Semaliya as well and thus, requested to take necessary action for illegal construction of house by respondent no.3 and to reject the application filed by him. He submits that the said suit came to be allowed partly by the Mamlatdar, Bayad by directing the petitioners to remove the obstructions created by them and to open the road in question. However, at the time of allowing the suit, necessary Panchnama has not been carried out by the concerned revenue authority. He further submits that on 02.07.2024, a spot inspection has been carried out by the Mamlatdar herself. However, notice has not been issued to the petitioners and statements of independent witnesses have not been recorded and Panchnama of the place has not been carried out in presence of the Panchas. He, therefore, submits that thus the statutory and mandatory procedure prescribed in the statute itself has not been scrupulously followed by the Mamlatdar before passing the impugned order.

6. Learned advocate Mr. Sheth further submits that being aggrieved by the said order passed by the Mamlatdar, the petitioners herein have preferred revision application before the Deputy Collector, Bayad. However, the said revision application also came to be dismissed by the Deputy Collector, Bayad.

Hence, present petition is preferred.

7. Learned advocate Mr. Sheth further submits that against the son of the respondent No.3, one FIR is also registered on 11.06.2023 with Sathambha Police Station, Aravalli for the offence under the provisions of the Prohibition Act. He, therefore, submits that the orders impugned passed by the Mamlatdar as well as Deputy Collector may be quashed and set aside and matter may be remanded back to the Mamlatdar to decide it afresh, in accordance with law and strictly following the statutory and mandatory procedure prescribed in the statute itself. In support of his submissions, he has put reliance upon the decision of Division Bench of this Court in the case of **Patel Bhavikkumar Praveenbhai & Ors., v. Harmanbhai Maganbhai Bhoi & Ors.**, rendered on 21.10.2024 in Letters Patent Appeal No.1558 of 2024 and allied matters.

8. On the other hand, learned AGP Mr. Jay Trivedi for the respondent revenue authorities has objected the petition and vehemently submitted that both the revenue authorities have recorded concurrent findings of fact and the scope of interference of this Hon'ble Court in the matter of concurrent findings of fact recorded by the concerned revenue authorities is very limited. He, therefore, submits that the petition is required to be dismissed.

9. Having heard learned advocates for both the parties and having considered the materials available on record, it is found out that respondent No.3 had instituted a suit against the petitioners for removal of obstructions created by the petitioners for smooth usage of the road in question. The said suit came to be allowed by the Mamlatdar concerned. Being aggrieved, petitioners have preferred revision application before the Deputy Collector concerned. However, the said revision application also came to be dismissed. It appears from the record that at the time of deciding the suit and arriving at the conclusion by the Mamlatdar, the mandatory and statutory provisions of the Act and procedure prescribed in the Act itself has not been scrupulously followed by the Mamlatdar and while upholding the decision of the Mamlatdar, the Deputy Collector has also not considered and brushed aside the said important aspect.

10. At this juncture, it would be profitable to refer to the decision of the Division Bench of this Court in the case of *Patel Bhavikkumar Praveenbhai & Ors. (supra)*, wherein, the Court observed as under:

“[11] A reading of Section 5(1) of the Act, 1906 indicates that the Mamlatdar has been conferred with power to remove or cause to be removed any impediment, erected otherwise than under due authority of law on any land used for agriculture, grazing, trees or crops, on to any adjacent land, where such impediment causes or

is likely to cause damage to the land used for such purposes or to any such grazing trees or crops thereon. Clause (b) contained in sub-section (1) of Section 5 empowers the Mamlatdar to give immediate possession of any lands or premises used for agriculture or grazing, or trees or crops, etc., or to any person who has been dispossessed or deprived thereof otherwise than by due course of law, or who has become entitled to the possession or restoration thereof. Sub-Section (2) of Section 5 empowers Mamlatadar to issue an order of injunction. The limitation for filing suit under the Act, 1906 is provided in Section 5 (3) of the Act, 1906. The cause of action has been narrated in sub section (4) of Section 5.

[12] We may further refer to the provisions of Sections 7, 8, 9, 10, 11, 12, 13, 14 & 15 of the Act, 1906 which contain the procedure for filing of the plaint, examination of the plaintiff on oath, subscription and verification of the plaint, rejection or return of the plaint and the procedure when plaint is admissible, including the attendance of the witnesses.

[13] A careful reading of the said provisions indicate that though the procedure for exercise of power under Section 5 of the Act, 1906 is summery in nature but a comprehensive adherence to the procedure is necessary to make an inquiry for the exercise of the power under Section 5 of the Act, 1906, to remove or cause to be removed any impediment, obstruction and to given immediate possession of the land to any person entitled to possession or to restoration thereof.

[14] It is, thus, clear that even in the summery proceedings to be conducted by the Mamlatadar, due care has to be taken to examine the claim of the plaintiffs and ensuring attendance of witnesses. Section 19, as a whole, is further

relevant to be noted hereinunder:-

19. Points to be decided by Mamlatdar at hearing.

(1) On the day fixed, or on any day to which the proceedings may have been adjourned, the Mamlatdar shall, subject to the provisions of Section 16, proceed to hear all the evidence that is then and there before him and to try the following issues, namely:

(aa) If the plaintiff avers that the natural flow of surface water from his, land has been impeded by any erection raised by the defendant causing damage or likelihood of damage to the plaintiff's land or to any grazing, trees or crops thereon-

(1) whether surface water flowed, in a defined channel or otherwise naturally from plaintiffs land on to defendant's land;

(2) whether the defendant erected any impediment to such flow, otherwise than under due authority of law;

(3) whether such erection impelled such natural flow of water within six months before the suit was filed;

(4) whether such impediment has caused or is likely to cause damage to plaintiffs land or to any grazing, trees or crops thereon;)

(a) If the plaintiff ever that he has been unlawfully disposed of any property or deprived of any use-

(1) whether the plaintiff or any person on his behalf or through whom he claims was in possession or enjoyment of the property or

use claimed up to any time within six months before the suit was filed;

(2) whether the defendant is in possession at the time of the suit and, if so whether he obtained possession otherwise than by due course of law;

(b) if the plaintiff avers that he is entitled to possession of any property or restoration of any use by reason of the determination of any tenure or other right of the defendant in respect thereof-

(1) whether the defendant is in possession of the property or in the enjoyment of the use by a right derived from the plaintiff or from any person through whom he claims

(2) whether such right was determined at any time within six months before the suit was filed;

(3) whether the defendant is other than a person who has been a former owner or part-owner within a period of twelve years before the institution of the suit of the property or use claimed, and other than the legal representative of such former owner or part-owner;

(c) If the plaintiff avers that he is still in possession of the property or in the enjoyment of the use, but that the defendant disturbs or obstructs, or has attempted to disturb or obstruct, him in his possession or use-

(1) whether the plaintiff or any person in his behalf is actually 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.

(2) Power of Mamlatdar to examine other witnesses and inspect property in disputes. - The Mamlatdar may, after due notice to, and in the presence of, the parties summon and examine as a witness any person who has not been summoned or produced, and may call for and cause to be proved any document which has not been applied for or produced, by either of the parties, where he considers it expedient in the interest of justice so to do, and may, if he thinks fit, make a personal inspection of the property in dispute in the presence of, or after due notice to, the parties.

[He shall without unnecessary delay record a memorandum after hearing the parties on the spot if present, of any relevant facts observed at such inspection. The memorandum shall form part of the record of the case.]
[These words were added by Bombay 11 of 1928, Section 2, First Schedule.]

(3) Record of Proceedings by Mamlatdar. - The Mamlatdar shall with his own hand make or sign a memorandum of the substance of the evidence of each witness as the examination of the witness proceeds, and briefly record his reasons for his finding.

(4) Orders to be passed by Mamlatdar upon decisions in favour of plaintiff and defendant. - Where the Mamlatdar's finding upon the issues is in favour of the

plaintiff, he shall make such order, not being in excess of the powers vested in him by Section 5, as the circumstances of the case appear to him to require; and where his finding is in favour of the defendant, he shall dismiss the suit. In either case the costs of the suit, including the cost of execution, shall follow the decision.

[15] A careful reading of Section 19 further indicates that the Mamlatdar has even power to examine the witnesses and inspect the property in question so as to determine the dispute in a logical manner and is also required to maintain the record of the proceedings by making or signing a memorandum of the substance of the evidence of each witness as examined by him, and briefly record his reasons for his finding.

[16] Taking note of the above procedure prescribed under the Act, 1906, when we examine the impugned order dated 10.12.2015 passed by the Mamlatdar in deciding the issue of the right of way claimed by the petitioners in the application dated 04.08.2015 on the premises that their existed a way in the East-West direction on the southern side of Survey No.159/1, which is the land belonging to the original defendants / appellants herein, we find that there is absolutely no discussion nor any finding on any of the material on record. The document appended at page '11' of the Civil Application No.2 of 2024 filed along with the affidavit dated 03.10.2024 as panchnama dated 09.10.2015 relied by the Mamlatdar has not been disputed by the respondents herein, namely, the original plaintiffs before us. The said panchnama does not contain any averment of any inspection made by the Mamlatdar.

[17] At this stage, we may record the submission made by the learned counsel for the respondent based on the averments made in the affidavit of

the Mamlatdar dated 23.10.2018 at page '133' of the paper-book, which refers to a panchnama executed on 06.11.2017 by the concerned Mamlatdar, a copy whereof has been filed as an Annexure-R1 to the said affidavit and may record that after conclusion of the proceedings before the Mamlatdar on 10.12.2016, and the order passed by the Deputy Collector dated 12.04.2016, the panchnama, if any, prepared subsequently as on 06.11.2017 with respect to the dispute in question, would be of no relevance.

[18] It is further not possible for the Court to make any factual inquiry about the correctness of the content of the document appended as panchnama dated 06.11.2017, brought on record with the affidavit of the Mamlatdar dated 23.10.2018.

[19] We may further record that the learned counsel for the respondent would also submit that the panchnama dated 09.10.2015, which contains the signature of the community members of the original plaintiffs, was prepared on the same day when the statement of the plaintiffs witness was recorded by the Mamlatdar. It is sought to be submitted that in fact the statements of both sides were recorded by the Mamlatdar and on the same day panchnama was prepared. It can, thus, be assumed that the original defendants / appellants herein were aware of the preparation of the panchnama and also that all the parties were present during the course of inspection.

[20] These submission are found misconceived for the simple reason that no assumption can be drawn about any fact which is not stated or is not reflected from the document itself.

[21] With these, we have reached at an irresistible conclusion that the order dated 10.12.2015 passed by the Mamlatdar is wholly a

cryptic order. The right of way is a valuable right given to an agriculturalist and it would also cause prejudice to the fellow agriculturalist / landholder from whose land, right of way is to be granted. A fulfledged inquiry strictly in accordance with the procedure prescribed under the Act, 1906 was required to be conducted by the Mamlatdar. This has not been done and further it is noteworthy that the learned Single Judge while dismissing the writ petition did not even take note of the above aspects of the matter and straightaway referring to the material brought on the record by means of the additional affidavit filed by the private respondents / original plaintiffs, which has been extracted in paragraph '7' of the order impugned, proceeded to dismiss the writ petition. We find inherent fallacy the opinion drawn by the learned Single Judge for the simple reason that the dispute could not have been adjudicated treating the averments made by the respondents in the additional affidavit filed before the writ court, as a gospel truth.

[22] For the aforesaid, while setting aside the judgment and order dated 25.04.2023 passed by the learned Single Judge, we find it fit and proper to quash the orders dated 10.12.2015 passed in Case No.5 of 2015 by the Mamlatdar and the order dated 12.04.2016 passed by the Deputy Collector, Anand in Appeal No.1 of 2016. While reviving the original proceedings, namely, the Case No.5 of 2015, registered on the application dated 04.08.2015 moved by the respondents herein, the matter is remitted for adjudication by the Mamlatdar keeping in mind of the provisions of the Act, 1906, strictly in accordance with law, as expeditiously as possible, preferably within a period of FOUR MONTHS from the date of receipt of the copy of this order. It goes without saying that due care shall be taken by the Mamlatdar while making inspection of the site in question and recording

of evidence of the witnesses.

[23] With the above, the appeal stands allowed. It is clarified that the Mamlatdar shall decide the matter independently without being influenced by any of the observations made hereinbefore."

11. In view of the aforesaid observations made by the Division Bench of this Court, the right of way is a valuable right given to an agriculturalist and it would also cause prejudice to the fellow agriculturalist / landholder from whose land, right of way is to be granted and therefore a full-fledged inquiry strictly in accordance with the procedure prescribed under the Act was required to be conducted by the Mamlatdar. However, in the instant case also, the same has not been done by the Mamlatdar. At the time of upholding the order of the Mamlatdar, the said important aspect has not been considered by the Deputy Collector. Therefore, the impugned orders passed by the Mamlatdar and Deputy Collector are required to be quashed and set aside and matter is required to be remitted back to the Mamlatdar to decide it afresh.

12. Accordingly, the petition stands partly allowed and the order dated 12.03.2025 passed by the Deputy Collector, Bayad and order dated 03.08.2024 passed by the Mamlatdar, Bayad are quashed and set aside and matter is remanded back to the Mamlatdar, Bayad to decide it afresh, in accordance with law and after

affording an opportunity of hearing to all the affected parties and strictly following the procedure prescribed in the Act itself. The Mamlatdar shall decide the matter independently and without being influenced by any of the observations made in this order.

(DIVYESH A. JOSHI,J)

LAVKUMAR J JANI