

Reserved On : 22/12/2025  
Pronounced On : 12/01/2026

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**R/SPECIAL CIVIL APPLICATION NO. 14956 of 2024**

**With**  
**CIVIL APPLICATION (FOR DIRECTION) NO. 1 of 2025**  
**In R/SPECIAL CIVIL APPLICATION NO. 14956 of 2024**

**FOR APPROVAL AND SIGNATURE:**

**HONOURABLE MR. JUSTICE DIVYESH A. JOSHI**

**Sd/-**

|                        |     |    |
|------------------------|-----|----|
| Approved for Reporting | Yes | No |
|                        |     | ✓  |

**DHANSUKHBHAI JERAMBHAI PRAJAPATI & ANR.**

**Versus**

**DR. GUMANSINH BHIKHUBHAI DESAI & ORS.**

**Appearance:**

**MS SONAL D VYAS(999) for the Petitioner(s) No. 1,2**

**MR. JAY TRIVEDI, LD. ASST. GOVERNMENT PLEADER for the**  
**Respondent(s) No. 3**

**MR. MAULIN RAVAL, LD. SR. ADV. WITH MR RUTVIJ M BHATT(2697) for**  
**the Respondent(s) No. 1**

**NOTICE SERVED BY DS for the Respondent(s) No. 2**

**CORAM: HONOURABLE MR. JUSTICE DIVYESH A. JOSHI**

**CAV JUDGMENT**

1. By this application under Article 227 of the Constitution of India, the petitioners have prayed for the following reliefs;

*“(A) Your Lordships may be pleased to allow this Special Civil Application.*

*(B) Your Lordships may be pleased to issue a writ, direction or order quashing and setting aside the order passed by the respondent no.3 below Revision Case No.2 of 2024 dated 07.08.2024 (Annx-H).*

*(C) Pending admission hearing and final disposal of the present petition, the implementation, execution and/or operation of the order dated 07.08.2024 (Annex-H) passed by the respondent No.3 below Revision Application No.2 of 2024 may be stayed and the respondent no.1 may be restrained from entering into the land belonging to the petitioners bearing Survey No.247 and 248 (Old Survey No.195/1 and 195/2) at Village: Vejalpur, Taluka & District: Valsad.*

*(D) Such other and further relief/s which the Honourable Court may deem fit, just and proper be granted in the facts and circumstances of the present case and in the interest of justice."*

2. Facts, giving rise to the filing of the present application, may be summarized as under;

2.1 The petitioners are the owners and occupants of the land bearing Survey No.247 and 248 at Village: Vejalpore, Taluka & District: Valsad.

2.2 The respondent No.1 is the owner of the land bearing Survey No.314 (old Survey No.247) at Village: Vejalpore. Taluka & District: Valsad.

2.3 The land adjoining to the land of the respondent No.1 is the land of the Rahulbhai Desai bearing Survey No.246 (old Survey No.193/3). The land belonging to the petitioners also adjoining to the land of the petitioners.

2.4 The respondent No.1 was using a way from the land of Rahulbhai Desai situated at Survey No.246 (old Survey No.193/3) for entering their own land for the purpose of agricultural operations for many years. Therefore, the

respondent No.1 entered into an MOU with Rahulbhai Desai on 22.08.2023. It was mentioned in the said MOU that the respondent No.1 is utilizing a way passing through the Survey No.246 belonging to Rahulbhai Desai since long. It was also mentioned in the MOU that the said way is passing from the west side of the land belonging to the petitioners bearing Survey No.248, which is the boundary of their way passing through the land of Shri Rahul Desai.

2.5 The respondent No.1 filed an application under Section 5 of the Mamlatdar Courts Act, 1906 before the Mamlatdar against the petitioners alleging therein that the petitioners have illegally closed the right of way of the respondent No.1 by creating impediment in passing through the land of Rahulbhai Desai towards the land of the respondent No.1.

2.6 The respondent No.2-Mamlatdar allowed the application of the respondent No.1, directing the petitioners to remove the alleged impediment.

2.7 Being aggrieved, the petitioners preferred revision under Section 23(2) of the Act, 1906 before the respondent No.3-Deputy Collector. The Deputy Collector rejected the revision application of the petitioners and confirmed the order passed by the Mamlatdar.

2.8 Being aggrieved, the petitioners are here before this Court with the present application.

3. Learned advocate Ms. Sonal D. Vyas appearing for the petitioners has submitted that the petitioners are the owners

and occupants of the land at Survey Nos.247 and 248 at Village: Vejalpore, Taluka & District: Valsad. The respondent No.1 is possessing the land at Survey No.314 (old Survey No.247) adjoining to the land of one Rahul Desai, who is the owner of land at Survey No.246 (old Survey No.193/3). The land of the petitioners are also adjoining to the land of said Rahul Desai. She further submits that the respondent No.1 was using the land of Rahul Desai to access to his agricultural field since many years, and an agreement in the form of an MOU in this regard has also been entered into between the respondent No.1 and Rahul Desai. She has further submitted that the said alleged right of way is passing through the west side of the land belonging to the petitioners bearing Survey No.248, which is the boundary of the land of the petitioners passing through the land of Rahul Desai. Learned advocate Ms. Vyas has also submitted that to the utter shock and surprise of the petitioners, and with a view to create a new way passing through the land of the petitioners, the respondent No.1 instituted a suit before the Mamlatdar under Section 5 of the Act, 1906 against the petitioners for removal of the construction made by the petitioners in their own land. Learned advocate Ms. Vyas has further submitted that the Mamlatdar, without considering the contentions raised by the petitioners in their reply as well as documentary evidences produced by the petitioners, allowed the said application of the respondent No.1, which has also wrongly been confirmed by the Deputy Collector in the revision application filed by the petitioners.

4. Learned advocate Ms. Vyas has further submitted that both the authorities below have committed a grave error in entertaining the application filed under Section 5 of the Act, 1906, inasmuch as, the date does not indicate the date on which the cause of action arose which is mandatory under the provisions Section 5 of the Act, 1906. She has also submitted that it is an admitted position of fact that Panchnama had been carried out and statements were recorded by the Circle Officer under the instructions of the Mamlatdar, however, no notice with regard to carrying out the Panchnama was issued to the petitioners. Neither the Panchnama was carried out in the presence of the petitioners nor their signatures were obtained, and as such, there is a clear cut breach of Section 19(2) of the Act, 1906 while passing the order by the Mamlatdar, and as such, in the absence of mandatory procedure being followed by the Mamlatdar in the proceedings under Section 5 of the Act, 1906, the order passed thereunder automatically becomes void, ab-initio, and as such, requires to be quashed and set aside, and when the order passed by the Mamlatdar itself suffers from procedural latches and does not meet with the mandatory requirements, the order passed by the Deputy Collector, confirming the same without giving any independent reasons, also requires to be quashed and set aside. Thus, the order of the Mamlatdar being passed without following the mandatory procedure as prescribed in the statute, and the same being confirmed by the Deputy Collector without giving any independent reasons, can be said to be non-speaking and not a reasoned orders, and as such, they are required to be quashed and set aside.

5. Learned advocate Ms. Vyas has further submitted that apart from the procedural latches, it is also pertinent to note that, as stated above, the respondent No.1 was using the right of way to access his own land, and to that effect, both the applicant and the said Rahul Desai had also entered into one MOU, wherein the petitioners were not made the parties, nor there was any mention about any way passing through the land of the petitioners for the respondent No.1 to access to his land. However, subsequently, with a view to create new way, absolutely false and frivolous proceeding has been initiated by the respondent No.1 against the petitioners before the Mamlatdar without joining Rahul Desai as the party respondent in the proceedings before the Mamlatdar, though he was a necessary party, and as such, in the absence of non-joinder of necessary party, the proceedings cannot be conducted. Moreover, even in the application before the Mamlatdar, the respondent No.1 himself has stated that he was using his right of way from the field of Rahul Desai, which makes it clear that the right of way is existed from Survey No.246 belonging to Shri Rahul Desai, and as such, it clearly appears that the respondent No.1, is maliciously trying to create a new way by disturbing the possession of the petitioners over their lands. She has further submitted that it has never been the case of the respondent No.1 that he had no other right of way to access his own land, except the way from the field of the petitioners. In fact, from the pleadings of the suit before Mamlatdar, it appears that there was an alternate way for the respondent No.1 to access to his own land, which he was using

since many years. Learned advocate Ms. Vyas has also submitted that the authorities below have committed a grave error in not appreciating the documentary evidence in the form of bills of fencing and the measurement-sheet, inasmuch as, it clearly showed that the petitioners got their land measured by the officer of the D.I.L.R, and accordingly, carried out fencing on their land in the year 2016 and 2021 which was not objected by the respondent No.1 at that point of time. Moreover, the suit preferred by the respondent No.1 was also barred by limitation, as it was filed beyond the period of limitation. To buttress her submissions, learned advocate Ms. Vyas has relied upon the following decisions;

(i) In the case of Patel Bhavikkumar Praveenbhai vs. Harmanbhai Maganbhai Bhoi, 2024 (0) GUJHC 61797;

(ii) In the case of Vallabhbhai Vastabhai Kukadiya vs. Deputy Collector, Botad, 2022 (2) GLH 469;

6. In such circumstances, referred to above, learned advocate Ms. Vyas prays that there being merit in the present application, the same be allowed, and the relief, as prayed for, be granted.

7. On the other hand, the present application has been vehemently opposed by learned senior advocate Mr. Maulin Raval assisted by learned advocate Mr. R.M. Bhatt appearing for the respondent No.1 (original plaintiff before the Mamlatdar).

8. Learned senior advocate Mr. Maulin Raval has submitted

that no error, not to speak of any error of law, could be said to have been committed by both the authorities below while passing the impugned orders. He has submitted that the two authorities have concurrently held that the respondent No.1 had a right of way through the land of the petitioners, which they had obstructed, and as such, the concurrent findings of fact recorded by both the authorities below do not require any interference. Learned senior advocate Mr. Raval has also submitted that while obtaining the interim order in the present proceedings, very deliberately, incorrect and misleading statements, knowing it to be false, have been made by the petitioners that the owner of land bearing Survey No.246 (old Survey No.193/3) was not a party and/or absent in the proceedings before the Mamlatdar. However, contrary to the said assertion made by the petitioners, the fact is that the said Rahul Desai had participated in the proceedings before the Mamlatdar by filing an affidavit categorically stating therein that the right of way has existed since last more than 15 years, a copy of which affidavit is also part of the record. He has also submitted that relying upon such assertion made by the petitioners, this Court granted ad-interim relief in favour of the petitioners by demonstrating the said false statement in paragraphs-3 and 4 of the order dated 20.10.2024. Thus, it can be said that the petitioners have misled this Court by making false statement and by suppressing the material facts with regard to filing of an affidavit by Rahul Desai, the owner of the adjacent land before the Mamlatdar.

9. Learned senior advocate Mr. Raval has further submitted

that all necessary and mandatory procedure had been followed by the Mamlatdar. He has submitted that pursuant to the application filed by the respondent No.1, the Mamlatdar, acting swiftly, directed the Circle Officer to carry out the Panchnama of the spot and record the statements of the neighboring farmers, and after taking into consideration the report submitted by the Circle Officer, the Mamlatdar took cognizance and thought fit to initiate the proceedings. Thereafter, the petitioners were also summoned by the Mamlatdar on 12.11.2023, a copy of which notice has also been produced vide a separate compilation. He has further submitted that the petitioners have further suppressed the very crucial fact that they were also a party to the six-party MOU executed in the year 2011 between the six farmers of the adjacent lands, wherein it was specifically mentioned that a way is in existence from the eastern side of the field of Rahul Desai, going towards the fields of rest of the farmers, and there is no other alternate way available except the said way, and it was agreed upon to keep the road open. However, very deliberately, the petitioners have suppressed the said fact and have not produced the said MOU on record only with a view to mislead the Court. Learned senior advocate Mr. Raval has further submitted that like Rahul Desai, one lady, namely, Beena Desai, the owner of one of the adjacent lands had also filed an affidavit before the Mamlatdar, specifically stating therein that the way in question is in existence since last more than 15 years, and except the said way, there is no other way to access to the land of respondent No.1, which has been obstructed by the petitioners by making a wire fencing, due to

which, they are not able to go to their respective fields.

10. Learned senior advocate Mr. Raval has further submitted that the application filed by the petitioners are only filled with false and frivolous assertions. In the memo of the application, the petitioners have stated that no Panchnama had been carried out by the concerned authority. However, contrary to the same, the Circle Officer carried out spot visit and prepared a Panchnama in the presence of two Panchas, recorded the evidence, including recording of the statements of Panchas, and after relying upon the materials and documents produced before the Mamlatdar, the Mamlatdar passed the impugned order holding that the respondent No.1 enjoyed the right of way customarily since long through the land of the present petitioners, and that there was no other road by which the respondent could access his own land and finally that the present petitioners had obstructed such passage. He therefore allowed the application and directed the petitioners to remove such obstruction. The Deputy Collector also concurred with the view of the Mamlatdar. The report submitted by the Circle Officer is also part and parcel of the record, and are produced by way of a separate compilation. Learned senior advocate Mr. Raval has also submitted that the petitioners have all throughout contested the proceedings before the Mamlatdar, filed replies, participated in the hearing, and thereafter filed a revision application before the Deputy Collector, challenging the order of the Mamlatdar. Thus, it can safely be said that the petitioners were fully aware of all the proceedings, reports, inspections and findings, and therefore, at this juncture, he cannot raise the plea of ignorance. The said plea is false,

misleading and intentionally raised.

11. Learned senior advocate Mr. Raval has further submitted that the present application is filed under Article 227 of the Constitution of India, challenging the concurrent findings of fact recorded by two competent revenue authorities, and the scope of interference under Article 227 are very limited. He has also submitted that the Court cannot re-appreciate the evidence or re-examine the factual findings unless any perversity or jurisdictional error is found out in the orders under challenge. Learned senior advocate Mr. Raval has also submitted that as per Section 5 of the Act, 1906, once the Mamlatdar records a factual finding regarding the existence or non-existence of a right of way, any obstruction including the wire fencing or impediments, are required to be removed, and the authority is empowered to enforce such right. He, therefore, has submitted that the order passed by the Mamlatdar is just, legal and proper, and has been rightly affirmed by the Deputy Collector in revision. The said concurrent findings of fact do not suffer from any perversity, illegality, or jurisdictional error, and therefore, do not warrant interference at the end of this Court. Hence, the present application is required to be dismissed with exemplary cost. To buttress his submissions, learned senior advocate Mr. Raval has relied upon the following case laws;

“(i) the decision of the Hon’ble Apex Court in the case of M/s Puri Investments vs. M/s. Young Friends & Co. & Ors., Civil Appeal No.1609 of 2022, decided on 23.02.2022;

(ii) In the case of Rajendra Diwan vs. Pradeep Kumar Ranibala, reported in 2019 (20) SCC 143;

(iii) In the case of Chaudhari Virasangbhai Dalabhai vs. Chaudhari Ranchhodbhai Raghjibhai, reported in 2001 (4) GLR 2981;

(iv) In the case of Hasmukhbhai Kantibhai Patel vs. Maheshbhai Hasmukhbhai Patel, reported in 2019 (0)GUJHC 39144;

(v) In the case of Rishi Petrochem Private Limited Thr. Director Ganpatbhai Nagarbhai Patel vs. Dipen Prahladbhai Patel, reported in 2024(3) GLR 2376;

12. The present application has also been opposed by learned AGP Mr. Jay Trivedi appearing for the State-respondents. He has submitted that the dispute appears to be between the two private individuals, and both the learned counsel have already brought on record the factual aspects of the matter. He has further submitted that all the necessary and mandatory procedure as envisaged in the statute had been followed by the competent revenue authority. Panchnama was also prepared by the Circle Officer, so also the statements of the witnesses also came to be recorded. A map was also prepared by the Circle Officer, and after going through all the materials submitted by the Circle Officer, the Mamlatdar has jumped to just conclusion that the petitioners herein had obstructed the way, due to which, the respondent No.1 as well as the other farmers could not access to their

respective lands, and ultimately, ordered removal of such unauthorized obstruction. Even, the Mamlatdar itself had visited the spot to verify the veracity of the report submitted by the Circle Officer before reaching to the just conclusion. The said findings of the Mamlatdar was subsequently confirmed by the Deputy Collector, and as such, in the absence of any perversity being brought to the notice of this Court by the petitioners in the impugned orders, the same do not require any interference at the end of this Court. The present application, therefore, deserves to be rejected.

13. In rejoinder, learned advocate Ms. Vyas has submitted that so far as the arguments canvassed by learned senior counsel Mr. Raval with regard to suppression is concerned, nothing has been suppressed by the petitioners either before this Court or before the revenue authorities. The document in the form of an MOU, upon which, the learned senior counsel has put much emphasis, was not a part and parcel of the record in the proceedings before the Mamlatdar, and as such, the said document has not been produced before this Court, and therefore, by no stretch of imagination, it can be said that, there is a deliberate suppression of any material fact on the part of the petitioners.

14. Heard the learned counsel appearing for the respective parties, and perused the record.

15. It emerges from the materials on record that the respondent No.1 herein initiated proceedings in the Court of the Mamlatdar, Valsad (Rural) under Section 5 of the

Act, 1906. The dispute between the petitioners herein and the respondent No.1 is one of removal of obstruction and the right of way. It is the case of the respondent No.1 that he has his own agricultural farm adjacent to the farm of the petitioners and there is a passage or a road passing through the land of the petitioners, with the aid of which, the respondent No.1 can enter into his farm. On the other hand, it is the case of the petitioners that there is no such road passing through his farm, on the strength of which, the respondent No.1 wants to enter into his farm. According to the petitioners as there is no road or any passage, there is no question of creating any obstruction.

16. The suit under the Mamlatdar Courts Act filed under Section 5 of the Act instituted by the respondent No.1 was adjudicated and ultimately, after considering the documents and materials available on record, the Mamlatdar vide order dated 08.02.2024 allowed the application of the respondent No.1 by observing that there was no alternate way in existence to access to the land of the respondent No.1, and even there are easementary rights of the neighboring farmers to access to their lands from the field of the respondent No.1. The Deputy Collector also concurred with the findings recorded by the Mamlatdar.

17. It also emerges that the Mamlatdar and Dy. Collector concurrently held that the respondent No.1 enjoyed a right

of way through the land of the petitioners since long. He had no other access to his land and that the petitioners had obstructed the passage. Section 5 of the Act authorizes the Mamlatdar to conduct summary proceedings and order removal of obstruction. By nature of things, such inquiry would be summary in nature and cannot take shape of full fledged civil suit. Necessarily, therefore, any order of the Mamlatdar, passed in exercise of such summary powers would be subject to the judgment of the Civil Court, if any Civil Suit is instituted.

18. With this background, one may examine the grievance of the petitioners. Firstly, I do not find that the Mamlatdar's order can be stated to be unreasoned, he had passed a detailed order taking note of the background of the case, the materials on record and his assessment of evidence to serve both the sides. The record suggests that the Mamlatdar himself visited the site and had concluded that there was a right of way through the land of the petitioners which he had blocked and further that Respondent No.1 had no other access to his own land. The Mamlatdar has also relied on the report submitted by the Circle Officer as well as the statements of the Panchas and the map prepared by the Circle Officer, which unambiguously support the case of the respondent No.1. This was done for recognizing the customary or a long standing right of way. Likewise, the Dy. Collector also

gave his reasons of reassessment of the evidence for confirming the views of the Mamlatdar.

19. The record further suggests that the owner of the adjacent land, namely, Rahul Desai, with whom the respondent No.1 had entered into an MOU, had also filed an affidavit in support of the claim of the respondent No.1 and he was also examined during the proceedings before the Mamlatdar. However, from the record, it appears that he was not cross-examined by the petitioners. Likewise, one another farmer having adjacent land namely, Beena Desai had also filed an affidavit before the Mamlatdar, supporting the existence of the right of way as claimed by the respondent No.1, which is being used by the respondent No.1 and other farmers since many years, and that there was no alternate way except the subject way. The record further reveals that the petitioners were the signatories in the six-party MOU entered into between each of the neighboring land owners, wherein it was agreed upon between them to keep open the right of way for the parties in the MOU to access to their respective fields.

20. Apart from the documents and materials available on record, supporting the case of the respondent No.1, I have also gone through the findings recorded by both the authorities below, and upon perusal of the same, I fail to find out any perversity, illegality or laxity in the impugned

orders passed by both the revenue authorities. Under the circumstances, I see no reason to interfere with the impugned orders.

21. In view of the aforesaid, this application fails and is hereby dismissed. Notice is discharged. The interim order, earlier granted, stands vacated.

22. The connected civil application also stands disposed of.

**(DIVYESH A. JOSHI,J)**

23. After the judgment is pronounced, learned advocate, Ms. Vyas has submitted that the execution, implementation and operation of the present order may be stayed for a period of four weeks, in view of the fact that the petitioners would like to carry further the said order before the superior Bench by filing Letters Patent Appeal.

24 However, learned AGP Mr. Jay Trivedi has objected to the said request. Thus, considering the fact that the interim relief is already operating in favour of the petitioners since long, the request is acceded to. Hence, the operation of the present order is stayed for a further period of four weeks.

**(DIVYESH A. JOSHI,J)**

VAHID

Original copy of this order has been signed by the Hon'ble Judge.  
Digitally signed by: ABDULVAHID ABDULSATTAR SHAIKH(HC00955), PRINCIPAL PRIVATE SECRETARY, at High Court of Gujarat on 13/01/2026 11:24:42