



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5074 OF 2022

Vimal W/o. Bhausahab Nabde
Age : 50 years, Occ : Agril,
R/o Sirasgaon, Tq. Newasa,
Dist. Ahmednagar.

..PETITIONER

VERSUS

1. The Sub Divisional Officer,
Ahmednagar, Dist. Ahmednagar.
2. The Tahsildar,
Tahsil Office, Newasa,
Tq. Newasa, Dist. Ahmednagar.
3. Radhakisan Sandipan Thorat,
Age : 49 years, Occ : Agril,
R/o Sirasgaon, Tq. Newasa,
Dist. Ahmednagar.
4. Sanjay D/o Sandipan Thorat
Age : 43 years, Occ : Agril.,
R/o as above.
5. Hirabai W/o Asaram Fukte
Age : 56 years, Occ : Agril.,
R/o As above.
6. Barku S/o Dagdu Auti
Age : 43 years, Occ : Agril.,
R/o As above.
7. Shivaji S/o Dagdu Auti
Age : 50 years, Occ : Agril.,
R/o As above.
8. Babasaheb S/o Dagdu Auti,
Age : 46 years, Occ : Agril,
R/o As above.

9. Sunanda W/o Shankar Auti
Age : 49 years, Occ : Agril,
R/o As above.

..RESPONDENTS

...

Mr.D.A. Mane, Advocate for the petitioner
Mr.N.D. Raje, AGP for the respondent/State.

Mr.S.V. Jadhawar, Advocate for respondent Nos.3 and 4.

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AND

WRIT PETITION NO. 5155 OF 2022

1. Santosh Bhausahab Waghmode
Age : 32 years, (Major), Occ. Agri.,
R/o Babhulgaon, Taluka Rahuri,
Dist. Ahmednagar.
2. Amol Ramdas Waghmode,
Age : 26 years, Occ : Agril.,
R/o Babhulgaon, Tq. Rahuri,
Dist. Ahmednagar.

..PETITIONERS

VERSUS

1. The State of Maharashtra,
through the Collector, Ahmednagar.
2. The Sub Divisional Officer/
The Deputy Collector, Shrirampur Division,
Shrirampur, Dist. Ahmednagar.
3. The Tahsildar, Tahsil Office, Rahuri,
Tq. Rahuri, Dist. Ahmednagar.
4. Mr. Dada Raibhan Waghmode
Age : Major, Occ : Agril.,
R/o Babhulgaon, Tq. Rahuri,
Dist. Ahmednagar.

..RESPONDENTS

...

Mr.V.B. Jagtap, Advocate for the petitioners
Mr. R.D. Raut, AGP for the respondent/State.
Mr. R.S. Kasar, Advocate for respondent No.4.

AND

WRIT PETITION NO. 5623 OF 2022

1. Sitaram S/o Dhula Gaikwad
Age : 71 years, Occ : Agriculture,
R/o Borsar (Kh), Tq. Kannad,
Dist. Aurangabad.
2. Dattu S/o Nana Gaikwad
Age : 35 years, Occ : Agriculture,
R/o Borsar (Kh), Tq. Kannad,
Dist. Aurangabad.
3. Pundlik S/o Jagannath Gaikwad
Age : 33 years, Occ ; Agriculture,
R/o Borsar (Kh), Tq. Kannad,
Dist. Aurangabad.
4. Sunil S/o Jagannath Gaikwad
Age : 42 years, Occ : Agriculture,
R/o Borsar (Kh), Tq. Kannad,
Dist. Aurangabad.

..PETITIONERS

VERSUS

1. The State of Maharashtra
through the Secretary,
Revenue Department, Mantralaya,
Mumbai.
2. The Deputy Collector (EGS),
Aurangabad.
3. The Tahsildar, Kannad,
Dist. Aurangabad.
4. Appa S/o Laxman Gaikwad
Age : 55 years, Occ : Agriculture,
R/o Jod Borsar, Tq. Kannad,
Dist. Aurangabad.

5. Vitthal S/o Laxman Gaikwad
Age : 53 years, Occ : Agriculture,
R/o Job Borsar, Tq. Kannad,
Dist. Aurangabad.
6. Eknath S/o Laxman Gaikwad
Age : 50 years, Occ : Agriculture,
R/o Job Borsar, Tq. Kannad,
Dist. Aurangabad.
7. Janardhan S/o Pandurang Gaikwad
Age : 45 years, Occ : Agriculture,
R/o Job Borsar, Tq. Kannad,
Dist. Aurangabad.
8. Madhav S/o Sakahari Gaikwad
Age : 50 years, Occ : Agriculture,
R/o Job Borsar, Tq. Kannad,
Dist. Aurangabad.
9. Lata W/o Karbhari Gaikwad
Age : 45 years, Occ : Agriculture,
R/o Job Borsar, Tq. Kannad,
Dist. Aurangabad.

..RESPONDENTS

...

Mr.K.F. Shingare, Advocate for the petitioners
Mr. V.S. Badakh, AGP for the respondent/State.
Mr. N.D. Sonavane, Advocate for respondent Nos.4 to 9.

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AND

WRIT PETITION NO. 6895 OF 2022

1. Lata Manohar Magar
Age : 52 years, Occ : Agri.,
 2. Manohar Dhondiba Magar
Age : 57 years, Occ : Agri.,
- Both R/o Sade, Tq. Kopargaon,
Dist. Ahmednagar.

..PETITIONERS

VERSUS

1. Rekha Bhaskarrao Gade
Age : 57 years, Occ : Agri.,
2. Gokul Punja Barhate
Age : 53 years, Occ : Agri.,
3. Eknath Dhondiba Magar
Age : 61 years, Occ : Agri.,

All R/o Sade, Tq. Kopargaon,
Dist. Ahmednagar.

..RESPONDENTS

...

Mr.PM. Borde h/f Mr.Shailesh S. Chapalgaonkar, Advocate for
the petitioners

Mr. A.D. Sonkawade, Advocate for respondent No.1.

...

AND

WRIT PETITION NO. 7499 OF 2022

1. Sunil Govardhan Kabra
Age : 55 years, Occ : Agri.,
R/o Sai Palace, K-10,
Tirupati Supreme Enclave,
Jalan Nagar, Aurangabad.
2. Anil Govardhan Kabra
Age : 51 years, Occ : Agri.,
R/o Govardhan Niwas,
Opposite District Court,
Aurangabad.

..PETITIONERS

VERSUS

1. The Sub-Divisional Officer,
Bhokardan, Dist. Jalna.
2. The Tahsildar/Mamlatdar,
Jafrabad, Tq. Jafrabad,
Dist. Jalna.

3. The Circle Officer,
Tembhurni, Tq. Jafrabad,
Dist. Jalna.
4. Dinkarrao Marotrao Deshmukh
Age : 45 years, Occ : Agri.,
5. Suresh Kisanrao Deshmukh
Age : 41 years, Occ : Agri.,
6. Bhagwanrao Marotrao Deshmukh
Age : 50 years, Occ : Agri.,
7. Jagannath Marotrao Deshmukh
Age : 49 years, Occ : Agri.,
8. Vasant Vyankatrao Deshmukh,
Age : 50 years, Occ : Agri.,
9. Smt. Sunita Kisanrao Ambhore
(Died) Through her legal heirs
- 9.1. Sunil Kisanrao Ambhore
Age : 48 years, Occ : Agri.,
- 9.2. Neeta Sarjerao Patil
Age : 45 years, Occ : Agri.,
- 9.3. Geeta Narayan Mule
Age : 43 years, Occ : Agri.,
- 9.4. Anil Kisanrao Ambhore
Age : 38 years, Occ : Agri.,

All R/o Timbhurni, Tal. Jafrabad,
Dist. Jalna.
10. Smt. Kavitatai Ganeshrao Deshmukh
Age : 39 years, Occ : Agri.,
11. Smt. Sandhyatai Rameshrao Deshmukh
Age : 40 years, Occ : Agri.,

12. Sau. Padmini Vasantrao Deshmukh
Age : 30 years, Occ : Agri.,
13. Sau. Hausabai Shamrao Gaikwad
Age : 50 years, Occ : Agri.,
14. Sandip Shamrao Gaikwad
Age : 50 years, Occ : Agri.,
15. Sudhakar Baliram Waghmode
Age : 45 years, Occ : Agri.,
16. Bhagwan Rajaram Deshmukh
Age : 42 years, Occ : Agri.,
17. Abarao Rajaram Deshmukh
Age : 48 years, Occ : Agri.,
18. Shivaji Aheluba Deshmukh,
Age : 46 years, Occ : Agri.,
19. Ankush Pandurang Chaure
Age : 45 years, Occ : Agri.,
20. Shrirang Sukhdeo Chaure
Age : 53 years, Occ : Agri.,
21. Girish Jagannath Deshmukh
Age : 52 years, Occ : Agri.,
22. Shantabai Jagannath Deshmukh
Age : 55 years, Occ : Agri.,
23. Sandip Dinkarrao Deshmukh
Age : 49 years, Occ : Agri.,
24. Anand Dinkarrao Deshmukh
Age : 47 years, Occ : Agri.,
25. Sau. Sangita Suresh Deshmukh
Age : 30 years, Occ : Agri.,

Respondent Nos.4 to 25 All
R/o Tembhurni, Tq. Jafrabad,
Dist. Jalna.

..RESPONDENTS

...

Mr.A.M. Hajare, Advocate for the petitioners
Mr. R.D. Raut, AGP for the respondent/State.
Mr.V.R. Dhorde, Advocate for respondent Nos.4 to 25.

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AND

WRIT PETITION NO. 7526 OF 2022

Bismillabi Amanulla Khan
Age : 76 years, Occ : Agricultural,
R/o At-Chikalthan, Taluka-Kannad,
Dist. Aurangabad, Maharashtra - 431 103.

..PETITIONER

VERSUS

1. Kalpanabai Murlidhar Raghu
Age : 55 years, Occ : Agricultural,
2. Vijay Murlidhar Raghu
Age : 30 years, Occ : Agricultural,

Both R/o At-Chikalthan, Taluka-Kannad,
Dist. Aurangabad, Maharashtra - 431 103.

..RESPONDENTS

...

Mr.A.A. Kokad, Advocate for the petitioner
Mr.P.S. Pawar, Advocate for respondent Nos.1 and 2.

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AND

WRIT PETITION NO. 8819 OF 2022

1. Digambar S/o Shivaji Marathe
Age : 38 years, Occ : Service and Agriculturist,
R/o Bhadgaon Peth, Tq. Bhadgaon,
Dist. Jalgaon.

2. Dagadu S/o Shivaji Marathe
Age : 41 years, Occ : Service and Agriculturist,
R/o Bhadgaon Peth, Tq. Bhadgaon,
Dist. Jalgaon.

..PETITIONERS

VERSUS

1. The Sub-Divisional Officer,
Pachora,
Through Sub-Divisional Office, Pachora
2. The Tehsildar, Bhadgaon,
Through Tehsil Office, Bhadgaon.
3. Pratap S/o Arjun Patil
Age : 62 years, Occ : Agriculturist,
R/o Bhadgaon Peth, Tq. Bhadgaon,
Dist. Jalgaon.
4. Sandhyabai W/o Prataprao Patil
Age : 57 years, Occ : Agriculturist,
R/o Bhadgaon Peth, Tq. Bhadgaon,
Dist. Jalgaon.
5. Rajani W/o Arun Wani
Age : 52 years, Occ : Agriculturist,
R/o Bhadgaon Peth, Tq. Bhadgaon,
Dist. Jalgaon.
6. Ganesh S/o Dattu Wani
Age : 24 years, Occ : Agriculturist,
R/o Bhadgaon Peth, Tq. Bhadgaon,
Dist. Jalgaon.
7. Salochanabai W/o Ramesh Patil
Age : 67 years, Occ : Agriculturist,
R/o Bhadgaon Peth, Tq. Bhadgaon,
Dist. Jalgaon.
8. Rajendra S/o Bhavrao Patil
Age : 52 years, Occ : Agriculturist,
R/o Bhadgaon Peth, Tq. Bhadgaon,
Dist. Jalgaon.

9. Ramkrishna S/o Bhavrao Patil
Age : 64 years, Occ : Agriculturist,
R/o Bhadgaon Peth, Tq. Bhadgaon,
Dist. Jalgaon.
10. Lilabai W/o Lotan Patil
Age : 62 years, Occ : Agriculturist,
R/o Bhadgaon Peth, Tq. Bhadgaon,
Dist. Jalgaon.
11. Kashinath S/o Narayan Patil
Age : 60 years, Occ : Agriculturist,
R/o Bhadgaon Peth, Tq. Bhadgaon,
Dist. Jalgaon.
12. Kalpanabai W/o Vithhal Patil
Age : 37 years, Occ : Agriculturist,
R/o Bhadgaon Peth, Tq. Bhadgaon,
Dist. Jalgaon.
13. Sindhubai W/o Ramesh Marathe
Age : 67 years, Occ : Service and Agriculturist,
R/o Bhadgaon Peth, Tq. Bhadgaon,
Dist. Jalgaon.
14. Dilip S/o Ramesh Marathe
Age : 50 years, Occ : Agriculturist,
R/o Bhadgaon Peth, Tq. Bhadgaon,
Dist. Jalgaon.
15. Kiran S/o Ramesh Marathe
Age : 48 years, Occ : Agriculturist,
R/o Bhadgaon Peth, Tq. Bhadgaon,
Dist. Jalgaon.
16. Deepak S/o Ramesh Marathe
Age : 46 years, Occ : Agriculturist,
R/o Bhadgaon Peth, Tq. Bhadgaon,
Dist. Jalgaon.
17. Prashant S/o Ramesh Marathe
Age : 44 years, Occ : Agriculturist,
R/o Bhadgaon Peth, Tq. Bhadgaon,
Dist. Jalgaon.

18. Hirabai W/o Bhila Gaikwad
Age : 57 years, Occ : Agriculturist,
R/o Bhadgaon Peth, Tq. Bhadgaon,
Dist. Jalgaon.
19. Madhavrao S/o Shankar Gaikwad
Age : 72 years, Occ : Agriculturist,
R/o Bhadgaon Peth, Tq. Bhadgaon,
Dist. Jalgaon.
20. Mirabai W/o Bapu Gaikwad
Age : 67 years, Occ : Agriculturist,
R/o Bhadgaon Peth, Tq. Bhadgaon,
Dist. Jalgaon.
21. Santosh S/o Baburao Marathe
Age : 57 years, Occ : Agriculturist,
R/o Bhadgaon Peth, Tq. Bhadgaon,
Dist. Jalgaon.
22. Sumanbai W/o Uttam Patil
Age : 58 years, Occ : Agriculturist,
R/o Bhadgaon Peth, Tq. Bhadgaon,
Dist. Jalgaon.

..RESPONDENTS

...

Mr.Swapnil S. Patunkar for J.P. Legal Associates, Advocate for
the petitioners

Dr. Kalpnata Patil Bharaswadkar, Addl. GP for the
respondent/State.

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AND

WRIT PETITION NO. 8920 OF 2022

Premraj S/o Achutrao Varat
Age : 45 years, Occ : Agriculture,
R/o Pimpalgaon Kanada, Tq. Georai,
Dist. Beed.

..PETITIONER

VERSUS

1. The Sub-Divisional Office at Beed,
Tq. & Dist. Beed.

2. The Tahsildar Office Georai,
Tq. Georai, Dist. Beed.
3. The Nayab Tahsildar, Georai,
Tq. Georai, Dist. Beed.
4. The Circle Officer, Pachegaon,
Tq. Georai, Dist. beed.
5. The Talathi Pachegaon,
Tq. Georai, Dist. Beed.
6. Murlidhar S/o Laxman Warat
Age : 50 years, Occ : Agri.,
R/o Pimpalgaon Kanada,
Tq. Georai, Dist. Beed.

..RESPONDENTS

...

Mr.Sanket S. Kulkarni h/f Mr. D.B. Pookale, Advocate for the petitioner

Mr. V.S. Badakh, AGP for the respondent/State.

Mr. S.R. Shirsat, Advocate for respondent no.6.

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AND

WRIT PETITION NO. 3270 OF 2022

1. Motilal S/o Nirranjan Bharathi
Age : 57 years, Occ : Service & Agriculture,
2. Sow. Vandanabai Motilal Bharati,
Age : 51 years, Occ : Household,
3. Maharu Nirranjan Bharati
Age : 64 years, Occ : Agriculture,

All R/o Salave, Tq. Shindkhed,
Dist. Dhule

..PETITIONERS

VERSUS

1. Sunita Bajirao Mali
Age : 43 years, Occ : Household,
2. Chindhabai Vishram Mali
Age : 66 years, Occ : Household,

All R/o Salave, Tq. Shindkhed,
Dist. Dhule
3. Shobhabai Shivdas Mahajan
**(Deleted as per Court order
dated 14.07.2022).**
4. The Tahsildar, Dondaicha,
Tq. Shindkhed, Dist. Dhule.
5. Sub-Divisional Officer, Shirpur,
Tq. Shindkhed, Dist. Dhule.

..RESPONDENTS

...

Mr.M.V. Salunke, Advocate for the petitioners

Mr.V.M. Chate, AGP for the respondent/State.

Mr. M.S. Shah, Advocate for respondent nos.1 and 2.

AND

WRIT PETITION NO. 11246 OF 2022

1. Kailash S/o Jagannath Sonawane
Age : 61 years, Occ : Agri.,
2. Pundlik S/o Jagannath Sonawane
Age : 57 years, Occ : Agri.,
3. Ashok S/o Jagannath Sonawane
Age : 40 years, Occ : Agri.,
4. Jagdish S/o Pundlik Sonawane
Age : 33 years, Occ : Agri.,
All residents of Dabhadi,
Tq. Kannad, Dist. Aurangabad.

..PETITIONERS

VERSUS

1. The State of Maharashtra
Through the Department of Revenue and Forest,
Mantralaya, Mumbai.
2. The Sub-Divisional Officer,
Kannad, Dist. Aurangabad.
3. The Tahsildar
Kannad, Dist. Aurangabad
4. Ambadas S/o Ramrao Sonawane
Age : 70 years, Occ : Agri.,
5. Shivaji S/o Ramrao Sonawane
Age : 55 years, Occ : Agri.,
6. Dilip S/o Ambadas Sonawane
Age : 35 years, Occ : Agri.,
7. Amol S/o Shivaji Sonawane
Age : 30 years, Occ : Agri.,
8. Radhikabai W/o Ambadas Sonawane
Age : 65 years, Occ : Agri.,
9. Sangeeta W/o Shivaji Sonawane
Age : 48 years, Occ : Agri.,

All residents of Dabhadi,
Tq. Kannad, Dist. Aurangabad.

..RESPONDENTS

...

Mr.K.F. Shingare, Advocate for the petitioners

Mr.V.S. Badakh, AGP for the respondent/State.

Mr.A.R. Ban h/f Mr.R.V. Gore, Advocate for respondent nos.4 to 9.

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AND

WRIT PETITION NO. 3623 OF 2024

1. Ratnakar S/o Vasantrao Bulge
Age : 52 years, Occ : Agriculture,
R/o Surangali, Tq. Bhokardan,
Dist. Jalna.

2. Prasad S/o Ratnakar Bulge
Age : 26 years, Occ : Agriculture,
R/o Surangali, Tq. Bhokardan,
Dist. Jalna.
3. Meenabai W/o Ratnakar Bulge
Age : 40 years, Occ : Agriculture,
R/o Surangali, Tq. Bhokardan,
Dist. Jalna.

..PETITIONERS

VERSUS

1. Anantrao S/o Vasant Rao Bulge
(Died) Through his. L.Rs.
- 1-A. Vijayabai W/o Anantrao Bulge
Age : 60 years, Occ : Housewife,
R/o Surangali, Tq. Bhokardan,
Dist. Jalna.
- 1-B. Mangesh S/o Anantrao Bulge
Age : 42 years, Occ : Service,
R/o Surangali, Tq. Bhokardan,
Dist. Jalna.
- 1-C. Umesh S/o Anantrao Bulge
Age : 35 years, Occ : Housewife,
R/o Surangali, Tq. Bhokardan,
Dist. Jalna.
2. Yogesh S/o Anantrao Bulge
Age : 60 years, Occ : Agriculture,
R/o Surangali, Tq. Bhokardan,
Dist. Jalna.

..RESPONDENTS

...

Mr.S.M. Kshirsagar, Advocate for the petitioners

Mr. M.D. Deshpande, Advocate for respondent nos.1-A to 1-C
and 2.

...

CORAM : ROHIT W. JOSHI, J.

RESERVED ON : 9th JULY, 2025

PRONOUNCED ON: 4th AUGUST, 2025

JUDGMENT :

. All these petitions arise out of proceedings under the Mamlatdars' Courts Act, 1906 (hereinafter referred to as "the Act"). The controversy in all these cases pertains to orders passed under Section 5(2) of the Act whereby the learned Mamlatdar has passed the order directing the petitioners to remove obstruction on road claimed by the respondents/original plaintiffs. The petitioners in all these petitions are original defendants in proceedings filed under Section 5 of the Act. In all these cases, the learned Mamlatdar had passed order against the petitioners directing removal of obstruction. The petitioners filed revision applications challenging the respective orders passed against them under Section 23(2) of the Act. The revision applications are also rejected. The petitioners have approached this Court challenging the orders passed by the Mamlatdar, which in turn, have been confirmed by the revisional authority. The contentions raised by the petitioners are that the provisions of the Act relating to filing and verification of plaint are not followed; the suits are filed beyond limitation; by the impugned orders a new road is created, which is beyond the scope of jurisdiction of the Mamlatdar exercising jurisdiction

under the Act; the spot panchanamas on the basis of which the impugned orders are passed are not drawn in accordance with the prescribed procedure and that alternate road is available.

2. In all these matters, the respondents have raised a preliminary objection to maintainability of the petitions on the ground of alternate remedy of filing civil suit. Respondents contend that orders impugned in the present petitions can be assailed by way of civil suit and further that the petitioners can approach the competent civil court to get the rights finally adjudicated and that the orders passed under the Act which are impugned in the present petitions will not come in the way to claim adjudication of the controversy on merits before the civil court once and for all.

3. The submission is elaborated stating that the orders passed under the Act are subject to order/decreed to be passed by a civil court. It is argued that the Act does not accord finality to orders passed by Mamlatdar under Section 5 as also to revisional orders passed by the Collector under

Section 23(2) and therefore, the said orders can always be assailed in civil suit. They contend that Section 22 of the Act clearly provides that person in whose favour order under the Act is passed is entitled to derive benefits of the same only until there is decree or order to the contrary by the competent civil court. They, therefore, state that the petitions should not be entertained in view of the alternate remedy. The learned Advocates have placed reliance on the following judgments :-

- (i) ***Rajendra s/o Sheshrao Shendge Vs. Shobhatai w/o Shrirao Ravate and another*** reported in ***AIR 2007 Bom. 90***,
- (ii) ***Mohammad Khan S/o Rahim Khan Vs. Shankar Maroti Dhage and another*** reported in ***2017(3) Mh.L.J. 135***,
- (iii) ***Digambar and others Vs. Vasant and others*** reported in ***2022(2) Bom. C.R. 154***
- (iv) Judgment dated 03.07.2025 in the matter of ***Alka w/o Pandit Ghongade and others*** passed in Writ Petition No.444/2024 passed at Aurangabad Bench of this Court.

4. Per contra, the learned advocates for the petitioners contend that the orders passed by the authorities under the Act cannot be challenged by filing a civil suit. They

contend that Section 23(1) of the Act bars an appeal from the order passed by the Mamlatdar under the Act. Section 23(2) of the Act provides that the order passed by the Mamlatdar shall be subject to a revisional jurisdiction of the Collector. The contention of the learned advocates is that the Act is a complete code by itself, and therefore, jurisdiction of the civil court to entertain challenge to order passed by Mamlatdar or order passed in revision by the Collector is barred by implication. As regards Section 22 of the Act, the learned advocates contend that the provision only contemplates that the orders passed by Mamlatdar will be subject to any order or decree passed by a civil court. It is contended that orders passed by Mamlatdar cannot be challenged before the civil court in view of Section 22 of the Act. The learned advocates contend that conjoint reading of Sections 22 and 23 of the Act will mean that a person against whom order is passed under the Act may file a substantive civil suit for adjudication of the dispute before the Mamlatdar by a civil court and when the claim is adjudicated by the civil court such adjudication shall have overriding effect over the orders passed under the Act. According to the learned advocates, the civil court has jurisdiction to decide a matter decided by a Mamlatdar afresh

on merits, however, according to them, the civil court cannot sit in appeal over the orders passed by Mamlatdar and that the civil court does not have jurisdiction to decide correctness or otherwise of orders passed by Mamlatdar, although with respect to the substantive dispute decided under the Act, civil court may take a contrary view on adjudication of the same dispute on merits.

5. The learned advocates for the petitioners place reliance on the following judgments :-

(i) Judgment dated 10.12.2018 passed by this Court in the matter of ***Mangalabai Vitthal Jadhav and another Vs. Manisha Gokul Jadhav and others (Second Appeal (ST.) No.25760/2018-Bombay Civil Appellate Jurisdiction).***

(ii) Judgment dated 05.07.2022 passed by this Court in the matter of ***Baban @ Nainsukh Dagadu Kurandale and another Vs. Dattu Sadashiv Kurandale and others (Writ Petition No.4425/2021-Bombay Civil Appellate Jurisdiction)***

6. The objection pertaining to alternate remedy is required to be considered in the light of judgments relied by both sides.

JUDGMENTS RELIED BY THE RESPONDENTS :-

7. In the case of *Rajendra Shendge (supra)* a suit was filed by the plaintiff for removal of encroachment and possession over agricultural land. The defendant in the suit had raised an objection to jurisdiction of the civil court by placing reliance on Section 5 of the Act. It was contended that the relief sought in the suit was covered by Section 5 of the Act which is a special enactment, and therefore, jurisdiction of civil court was barred. Dealing with the contention about maintainability of the civil suit, this Court held that Mamlatdars' Courts Act recognizes existence and continuation of powers and jurisdiction of a civil court. It is held that jurisdiction of the authorities under the Act is a summary jurisdiction. It is held that the jurisdiction of civil court is not barred either expressly or by necessary implication.

8. The orders passed under the Act were not challenged in the suit in the aforesaid matter, and therefore, *Rajendra Shendge (supra)* is not a direct authority for proposition that the orders passed under the Act can be challenged before a civil court.

9. Although in the matter of *Digambar and others (supra)* declaration was sought that the order passed by the Mamlatdar was null and void, substantive relief of perpetual injunction restraining the defendants from creating a cart-way was also sought by the plaintiff in the said suit. While dealing with the contention with respect to the jurisdiction of civil court to grant relief in respect of an order passed by the Tahsildar, this Court has held that in view of Section 22 of the Act, a party to proceeding before Mamlatdar can approach civil court to obtain relief contrary to the decision taken by Mamlatdar and decision by civil court contrary to order passed by Mamlatdar sets the decision by Mamlatdar at naught. This Court has all throughout dealt with the merits of controversy involved in the matter. The judgment does not directly hold that orders passed by the civil court can be challenged by filing a suit.

10. In the case of *Mohammad Khan S/o Rahim Khan (supra)* this Court has specifically held that the orders passed under the Act can be challenged in a civil suit. The substantial questions of law in the said Second Appeal were pertaining to

jurisdiction of civil court to entertain a challenge to orders passed by the Mamlatdar under the Mamlatdars' Courts Act. Following substantial questions of law were framed in the appeal :-

"a) Whether the learned lower appellate Court was justified in not framing a specific issue with respect to jurisdiction of the Civil Court to entertain civil suit, inter alia, challenging the order passed under the Mamlatdars' Courts Act, 1906, especially in view of the provision under section 23 of the said Act?

b) Whether civil suit lies against the order passed by the Mamlatdar's Court under the Mamlatdars' Courts Act, 1906?

c) Even if it is held that the civil suit lies, inter alia, challenging the order passed under the Mamlatdars' Courts Act, 1906, whether the learned lower appellate Court was justified in considering the entire controversy afresh? "

11. The aforesaid questions of law have been answered by this Court by holding that the jurisdiction of Mamlatdar is a summary jurisdiction and jurisdiction of civil court is not barred under the scheme of the Act. With respect to maintainability of suit to challenge orders passed by Mamlatdar, this Court has held as under :-

"6. In fact, the question of jurisdiction of the Civil Court to entertain, try and decide the suit challenging the order passed under Section 5 of the Mamlatdars' Courts Act is no longer *res integra* in view of the decision of the learned Single Judge of this Court in the case of **Rajendra Sheshrao Shendge v. Smt. Shobhatai S. Ravate & Anr.** Paras 11, 12 and 13 of the said decision being relevant.

I fully endorse the aforesaid view and intend to reinforce it as under:

7. I have gone through the provision of Section 5 of the Mamlatdars' Courts Act. The proviso below sub-section (1) of Section 5 of the said Act empowers the Mamlatdar to refuse to exercise the power under the said provision if it appears to him that such a case can be more suitably dealt with by the Civil Court. Though there is a revision provided under Section 23 of the said Act to challenge the order passed by the Mamlatdar under Section 5, **the Act nowhere attaches finality either to the order passed under Section 5 by the Mamlatdar on merits or to the order passed in revision under Section 23 of the said Act.** In the absence of such finality being attached to the order passed under the Act, the jurisdiction of the Civil Court cannot be held to be impliedly barred merely because the Act provides a separate machinery for getting the grievance redressed. **The ouster of the plenary jurisdiction of**

Civil Court cannot be readily interfered and such jurisdiction remains intact and available to be exercised either against the order under Section 5 or against the order of revision under Section 23 of the said Act.

8. *The learned counsels appearing for the parties could not bring to my notice any express provision creating bar of jurisdiction of the Civil Court to entertain, try and decide the suit challenging either the order passed under Section 5 or under Section 23 of the Mamlatdars' Courts Act. In a given case, a Civil Court may refuse to grant relief on the ground that the remedy of revision under Section 23 of the said Act is not exhausted, but that is not the mandate which the Civil Court is required to observe. The lower Appellate Court has, in terms, recorded the finding that when the order passed by the Mamlatdar is without following the procedure, it cannot come in the way of the Civil Court to decide the substantive rights of the parties. The view taken cannot be faulted with. The substantial questions of law at serial Nos. (a) and (b) are, therefore, answered accordingly.*

12. In the matter of *Alka w/o Pandit Ghongade (supra)* this Court has relegated parties challenging order passed under Section 5(2) by the Mamlatdar and order dismissing the revision passed by the Sub-Divisional Officer

under Section 23(2) to alternate remedy of filing civil suit in view of the judgments in the matters of ***Rajendra Shendge(supra) and Mohommad Khan (supra)***.

JUDGMENTS RELIED BY THE PETITIONERS :-

13. Per contra, in the matter of ***Mangalabai Vitthal Jadhav (supra)***, it is held that in view of Section 22 of the Mamlatdars' Courts Act, it will be open for either party to a proceeding before Mamlatdar to approach the civil court for adjudication of the dispute before the Mamlatdar on its own merits. It is held that the civil court is required to adjudicate the controversy individually on its own merits. It is however held that the civil court cannot be used by any party to the proceeding before the Tahsildar as an appellate forum to challenge the findings rendered by Mamlatdar. Relevant portion of the judgment is reproduced hereinbelow for ready reference :-

*“12. It is thus evident that the rights claimed before the authorities under the Act are transitory in nature and can be finally crystallized only in a civil remedy before the Civil Court. There can thus be no dispute that **the party approaching the Civil Court is required to prove his case***

independently on its own merits and not use the Civil Court as an Appellate Forum to challenge the findings rendered by the Mamlatdar, as sought to be done by the appellants herein.”

14. The said judgment is followed in the matter of ***Baban @ Nainsukh Dagadu Kurandale (supra)***, wherein it is held as under:-

“7. The statutory scheme is that rights and liabilities of the parties to the lis have to be independently addressed and decided by the civil court uninfluenced by the order which may have been rendered by the Mamlatdar. In that sense, the adjudication under Section 5 of the Act is subservient to the adjudication by the civil court.

.... While the civil court can arrive at findings which are different and indeed opposite to the findings recorded by the Mamlatdar, the findings shall have to be recorded by the civil court on the basis of the material on record in the civil proceedings, and not on the basis of certain perceived infirmities procedural or substantive, in the proceedings by the Mamlatdar.”

15. As noted above, the judgment of ***Mohammad Khan S/o Rahim Khan (supra)*** directly holds that orders

passed under Sections 5 and 23 of the Act can be challenged before the civil court. As against this, the judgment in the matter of *Mangalabai Vitthal Jadhav (supra)* and *Baban @ Nainsukh Dagadu Kurandale (supra)* directly hold that the civil court cannot sit in an appeal over the decision by the Mamlatdar, although the controversy adjudicated by Mamlatdar can be decided afresh by a civil court and on such adjudication by the civil court, the decision taken by Mamlatdar is rendered ineffective.

16. All these judgments are delivered by the learned Single Judges of this Court. The judgment in the matter of *Mohammad Khan S/o Rahim Khan (supra)* is prior in point of time. This judgment is not considered in subsequent two decisions of this Court i.e. in the matters of *Mangalabai Vitthal Jadhav (supra)* and *Baban @ Nainsukh Dagadu Kurandale (supra)*.

17. At this stage, it will be appropriate to briefly refer to the scheme of the Act. The Mamlatdar is a revenue officer, generally of the rank of Tahsildar. The Act confers jurisdiction

on him to pass appropriate orders in a summary proceeding. The orders passed under the Act are not meant to decide the rights of parties finally and conclusively. The proceeding before the Mamlatdar is called a suit. The person who invokes the jurisdiction is called plaintiff and other side is called defendant. The proceedings are commenced with presentation of plaint which is required to be filed in compliance of Section 7. The plaint must amongst other things disclose the nature of right, particulars regarding infringement of right and the relief sought. The plaintiff is also required to file list of documents and witnesses, if any. In case of any technical defects in the plaint, the Mamlatdar is required to remove the defects by following procedure prescribed under Sections 8 to 11 of the Act. The Mamlatdar is also authorized to summon and examine witnesses on oath. The Mamlatdar also has authority to enforce and execute his orders. However, as will be apparent from reading of Section 22 of the Act, the order of Mamlatdar is subject to any decree or order to the contrary to be passed by the Civil Court.

18. Since the controversy in the present matters is relating to alternate remedy, Sections 22 and 23 of the Act will

be relevant. Section 23 provides that there shall be no appeal from any orders passed by the Mamlatdar under the Act. However, Section 23(2) confers jurisdiction/authority upon the Collector to exercise revisional powers against the orders passed by the Mamlatdar. The orders passed by Mamlatdar are subject to orders passed on the same subject matter by the civil court. Section 22 provides that a person in whose favour order is passed by Mamlatdar is entitled to reap benefits of the order only till otherwise decreed or ordered by the competent civil court. The provision also states that in any subsequent proceeding between the same parties before the civil court, the decision by Mamlatdar will not be held to be conclusive. Thus, orders passed under the Act are subservient to order and/or decree by a civil court.

19. There is no provision under the Act expressly excluding jurisdiction of the Civil Court. Jurisdiction of a Civil Court to test the correctness or otherwise of orders passed by Mamlatdar under the Act is not expressly barred by any provision under the Act. The provisions of the Act also do not indicate that any finality attached either to the orders passed by the Mamlatdar or the orders passed by the Collector in

Revision under Section 23(2).

20. Legal position that the adjudication by Mamlatdar is merely ad-hoc adjudication to seize the matter of moment and not a final and conclusive adjudication is beyond any doubt. There is complete unanimity in this regard in all the judicial pronouncements. Perusal of Section 22 of the Act itself makes this legal position clear. Rather, it provides that orders passed under the Act are subject to order or decree passed by the civil court.

21. It is also obvious that the act does not create any right for the first time. The act merely provides for summary adjudication of pre-existing rights of easement and other rights relating to agricultural lands. Needless to reiterate that adjudication of rights under the Act is not final adjudication between the parties.

22. In order to decide the issue of jurisdiction of civil court with respect to orders passed by Mamlatdar under Section 5 or the Collector under Section 23 of the Act, it will

be profitable to refer to the Constitution Bench judgment of the Hon'ble Supreme Court in the matter of ***Dhulabhai etc., Vs. State of Madhya Pradesh and another, AIR 1959 SC 78***. The Hon'ble Supreme Court has referred to several judgments, particularly relating to taxing statutes, which contain a specific provision excluding jurisdiction of civil court and provided immunity to the orders passed by the authorities under the said statutes from challenge before the civil court. After referring to catena of judgments, the Hon'ble Supreme Court has culled out following legal principles :-

"(1) Where the statute gives a finality to the orders of the special tribunals the Civil Court's jurisdiction must be held to be excluded if there is adequate remedy to do what the Civil Courts would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.

(2) Where there is an express bar of the jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil court.

Where there is no express exclusion the

examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the tribunals so constituted, and whether remedies normally associated with actions in Civil Courts are prescribed by the said statute or not.

(7) An exclusion of the jurisdiction of the Civil Court is not readily to be inferred unless the conditions above set down apply."

23. It is clear from the aforesaid that even where a statute attaches finality to the orders passed by statutory authorities, jurisdiction of civil court is held to be ousted only if the statute provides for adequate remedy to do what the civil court is competent to do. It is further clear that if provisions of the Act have not been complied with then even if the statute provides for finality to orders, jurisdiction of civil court to challenge the orders is not excluded. In cases where there is no express bar to jurisdiction of civil court, the

relevant consideration is as to whether the right is conferred by the Act for the first time along with remedies for the enforcement of the same. It is held that if a right is created and remedy is provided under the same statute normally, the jurisdiction of the civil court ousted. However, if the right is a preexisting civil right and a forum is provided for determination of the said right, the test is whether such forum is competent to grant relief that a civil court can grant to a litigant. The judgment also states that where the order of the authority is ultra vires the Act i.e. it is passed in disregard to mandatory provisions of the Act itself and in cases where fundamental principles of law have not been followed, in such cases also jurisdiction of the Civil Court will not be ousted. Finally, it is held that exclusion of jurisdiction of civil court should not be readily inferred.

24. In the light of 2nd and 7th principle laid down in the matter of *Dhulabhai (supra)*, it must be held that jurisdiction of civil court to decide correctness or otherwise of orders passed by the Mamlatdar is neither expressly nor impliedly excluded. In this regard, it must be noted that there is no express bar to jurisdiction of Civil Court under the Act

and further that the statute does not create any special rights or liabilities for the first time by simultaneously providing for remedy for adjudication and enforcement of the same. The Act does not create rights and provide for machinery for enforcement of the same *uno flatu* i.e. in the same breath. The machinery under the Act is only for summary adjudication of pre-existing rights and even finality is not attached to such adjudication.

25. In the considered opinion of this Court, the first principle in the matter of *Dhulabhai (supra)* will also be relevant. The judgment provides that even where statute provides finality to the orders passed by special tribunals jurisdiction of the civil court is not excluded in cases where the statutory authority has not complied with the provisions of the Act and/or has not acted in conformity with fundamental principles of judicial procedure. Thus, even in cases where the Act provides for finality to the orders passed by the statutory authorities or tribunals, such orders cannot enjoy complete immunity of being tested by a civil court. Jurisdiction of civil court to ascertain correctness of orders passed by the authorities under the Act, which provide for finality of orders

is not completely excluded. Having regard to the aforesaid legal position as also the scheme of Mamlatdars' Courts Act, it must be said that jurisdiction of civil court is not excluded to ascertain correctness or otherwise of orders passed by the Mamlatdar.

26. Having regard to law laid down in *Dhulabhai (supra)*, it must be held that the civil court, apart from deciding the merits of the main dispute, can also decide correctness or otherwise of the order passed by the Mamlatdar under Section 5(2) as also by the revisional authority i.e. Collector under Section 23(2) of the Act.

27. At this juncture, it will be profitable to refer to a Division Bench judgment of this Court in the matter of *Huseinmiya Dosumiya Vs. Desai Khandubhai Jethabhai* reported in *AIR 1954 Bom 239*. In the said matter, order passed by Mamlatdar under the provisions of the Bombay Tenancy and Agricultural Lands Act, 1948 was challenged as ultra vires of the Act by filing a civil suit rather than availing remedy of filing appeal provided under the said Act. Section

85 (2) of the Tenancy Act provides that order passed by Mamlatdar or other authorities under the Act shall not be questioned in any Civil Court. The Mamlatdar had passed an order directing delivery of possession under Section 29 of the Act. The order passed by Mamlatdar was challenged by filing a civil suit. It will also be pertinent to mention that Section 74 of the Act provides for an appeal against order passed by the Mamlatdar under Section 29. Ignoring the remedy of filing appeal provided under the Act itself, a suit was filed in order to challenge the order passed by the Mamlatdar. In this context, issue pertaining to jurisdiction of Civil Court arose for consideration before the learned Division Bench of this Court. Holding that the Civil Suit is maintainable, the learned Division Bench has held as under :-

“ The other matter that has got to be considered is, what is the effect of s. 74 of the Act which provides for an appeal against the order of the Mamlatdar. It was open to the opponents to prefer an appeal against the decision of the Mamlatdar because s. 74 in terms provides for an appeal to the Collector against an order made by the Mamlatdar under s. 29. Instead of preferring an appeal the opponents have filed this suit in a Civil Court.

*Now, does the fact that a statute provides for a right of appeal against an order made by an authority set up under that statute make any difference to the position when the order made by the authority is an invalid or ultra vires order? It is clear that if the order itself is ultra vires it is a nullity and there is no obligation upon a party against whom the order is made to prefer an appeal against that order. The appeals that are provided for under s. 74 are strictly appeals against valid orders made by the Mamlatdar and orders made with jurisdiction. It may be that the Collector could have corrected the Mamlatdar and could have held that the order of the Mamlatdar was ultra vires. But the question is not whether the opponents could have appealed to the Collector and could have got the necessary relief. The question is whether the opponents are bound to appeal and are prevented or precluded from going to a civil Court. **In our opinion, on principle it is erroneous to argue that merely because a statute provides for a right of appeal, the party against whom the order is made is bound to appeal although the order made is a nullity. If the order is a nullity, the party is entitled to ignore it, to treat it as waste paper, and to go to a civil Court for a declaration that the order is a nullity and no action should be taken against the party under that order which would prejudice his rights.** See for this purpose the decision of a Full Bench of this Court in *Abdullamiyan Abdulrehman v. The Government of**

Bombay. Therefore, in our opinion, the learned Judge below was right in coming to the conclusion that he did that the Court had jurisdiction to try this suit.”

28. The judgment in the matter of ***Huseinmiya Dosumiya (supra)*** is followed by learned Single Judge in the matter of ***Meerabai Madhav Kossambe Vs. Laxmi Narayan Naik*** reported in ***2024 SCC Online Bom 1212***. The said judgment arises out of an order passed by the Mamlatdar under the provisions of the Goa Agricultural Tenancy Act, which is *pari materia* with the Bombay Tenancy Act. A suit was filed seeking declaration that the order passed by the Mamlatdar was a nullity. Section 58B of the said Act provides that orders passed by the authorities under the said Act cannot be challenged before the civil court. It was held that the order passed by the Mamlatdar was obtained by practicing fraud and principles of natural justice were also not followed in the proceeding before the Mamlatdar. The observations with respect to fraud may not be relevant for the purpose of present petitions. However, as regards breach of principles of natural justice, the learned Single Judge has held that breach of principles of natural justice resulted in violation of one of

the foundational principles of judicial procedure. It was therefore held that the suit was maintainable in view of first principle laid down in ***Dhulabhai***. Apart from ***Dhulabhai***, the learned Single Judge has placed reliance of judgment in the matter of ***State Bank of Patiala and others Vs. S.K. Sharma*** reported in ***(1996) 3 SCC 364***, wherein it was held that order passed by authority without opportunity of hearing would be invalid and also be termed to be void or a nullity. Likewise, by pressing reliance on the judgment in the matter of ***Huseinmiya Dosumiya (supra)***, it is held as under :-

“53. When the Mamlatdar makes an order within the jurisdiction or, in other words, makes an order for the purposes of the Act or an order required by the Act, such an order cannot be questioned in a civil Court. However, if Mamlatdar's order is not for the purposes of the Act or not required by the Act and the order is incompetent or ultra vires, then the order is a nullity, and it can be challenged in a civil Court.

54. The Division Bench rejected the argument that since an appeal was provided against Mamlatdar's order, the Civil Court would lack jurisdiction to entertain the suit.”

29. With respect, the judgments in the matters of

Mangalabai Vitthal Jadhav (supra) and *Baban @ Nainsukh Dagadu Kurandale (supra)* do not appear to be in consonance with the principles laid down in the matter of *Dhulabhai (supra)*. It is not possible to reconcile the ratio of *Mangalabai* and *Baban @ Nainsukh* with the law laid down in *Dhulabhai (supra)*.

30. The judgments in the matters of *Mangalabai Vitthal Jadhav and Baban @ Nainsukh Dagadu Kurandale (supra)* relied upon by the petitioners not only run contrary to the ratio of *Dhulabhai (supra)* but also to the ratio of the aforesaid Division Bench judgment in *Huseinmiya Dosumiya (supra)* which deals with jurisdiction of the Civil Court to entertain the challenge to the order passed by the Mamlatdar under the Tenancy Act. It will be pertinent to mention here that the said judgment deals with a statute under which jurisdiction of civil court is specifically barred and finality is attached the orders passed by authorities exercising jurisdiction under the Tenancy Act. The law laid down in the said judgment will apply with greater force in the present cases which deal with orders passed by Mamlatdar and/or Collector under the Mamlatdars Courts Act, which neither

expressly or impliedly excludes the jurisdiction of a civil court but rather provides that adjudication under the Act will be subject to any order to the contrary to be passed by a civil court.

31. In view of ***Mangalabai and Baban***, relied upon by the petitioners, although, the civil court cannot sit in appeal over decision taken by Mamlatdar, it can certainly take decision on merits of the matter contrary to the decision of Mamlatdar as also the Sub-Divisional Officer. Adjudication of the matter on merits by the civil court will have the effect of rendering the orders impugned in the present petition nugatory. Therefore, the petitioners can file a suit to have civil rights adjudicated by competent civil court once and for all. On adjudication of the matter by civil court controversy will be set at rest for all times to come.

32. It will also be pertinent to mention that the controversy involved in the matters under Mamlatdars' Courts Act essentially involve a scrutiny of disputed facts. The issue that arises for consideration pertains to existence of a

easementary right and obstruction thereof. The obstruction should be within period of six months prior to the date of filing of the suit before the Mamlatdar. In all these aspects inquiry is required in disputed questions of facts. It is well settled that a court exercising jurisdiction under Article 226 or 227 of the Constitution of India should not venture into an inquiry with respect to disputed questions of facts. Although, in cases of perversity or findings being based on conjectures and not on any evidence, and such other limited grounds, interference with findings of fact is permissible, it is well settled that in no case the evidence can be re-appreciated in a petition under Article 226 or 227 of the Constitution of India. However, civil court is a court of facts and law both. It has power and jurisdiction to permit parties to lead evidence and adjudicate disputed questions of facts in a full-dressed trial. Having regard to the nature of controversy, it is desirable that the dispute between the parties is thrashed out once and for all before a civil court. The remedy of filing a civil suit is not only an equally efficacious remedy but it is rather a more appropriate and effective remedy.

33. 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. As a consequence of this, whenever a challenge to the orders passed under the Act is brought before this Court, submissions are advanced with respect to technical aspects regarding non-compliance of statutory provisions relating to procedure. Even when submissions with respect to merits of the rival claims are made, since merits of the matter involve essentially disputed questions of fact, this Court is unable to make a venture to rule on disputed questions of facts. 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. Litigants who are farmers coming from villages are forced through repeated rounds of litigation. However, if the matter goes to the civil court, the controversy between the parties can be adjudicated on merits and can be set at rest once and for all.

34. 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. Similarly, while exercising jurisdiction under Section 143, the Tahsildar cannot order removal of obstruction over an existing road.

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 preexisting right of easement. Such easementary right can be enforced by any person by instituting a civil suit before the competent civil court. Jurisdiction of civil court is not restricted like jurisdiction of Mamlatdar or Tahsildar under Section 143. On an easementary right being established, civil court can grant right of way through a road which did not exist prior in point of time, as can be done by the Tahsildar under Section 143 and likewise civil court can also order removal of obstruction as can be done by Mamlatdar under Section 5 of the Mamlatdars' Courts Act. A party, who approaches civil court for adjudication of his civil right, thus has the benefit of prosecuting claim before a judicial forum whose jurisdiction is not circumscribed or restricted but limitless. Therefore, a person on proving the need can get orders for creation of a road and/or removal of obstruction over existing road. Both these reliefs can be sought in the same proceeding. Likewise provisions of Easements Act can also be invoked by both parties.

36. In a suit for enforcement of easementary rights parties can also take resort to provisions of the Indian

Easements Act before the civil court relating to easement of necessity, easement by prescription etc., as also extinction of easement, frustration of easement etc. Such defences which depend on scrutiny of facts cannot be raised and adjudicated before the High Court in a petition under Article 226 or 227 of the Constitution of India. It also needs to be mentioned that there are provisions under the M.L.R. Code, which can also be pressed into service while prosecuting the matter before the civil court. Recourse to the provisions can be taken by both the parties.

37. Thus, for the reasons aforesaid, in the considered opinion of this Court, remedy of filing a civil suit is not only an efficacious alternate remedy but a more effective and meaningful remedy.

38. As regards, any emergent situation, that arises in such matters, it goes without saying that the same can be addressed by the civil court by passing appropriate orders of temporary injunction, which will of course prevail over orders passed under Section 5(2) and 23(1) of the Mamlatdars' Courts Act. Section 22 includes the words “decree” and

“order” both . The words unless otherwise ordered would not mean unless otherwise finally ordered. The legislature has deliberately used the words “decree” and “order” both in the provision. Therefore, even if an interlocutory order is passed by the civil court contrary to the decision of Mamlatdar, the interim order by civil court will prevail. This would, therefore, take care of any urgent or emergent situation, in as much as, the plaintiff can also seek order of temporary injunction contrary to the orders passed under the Act and if order of temporary injunction is granted, the same shall prevail over the formal orders passed under the Act. It will be pertinent to mention that the judgment in the matter of ***Baban @ Nainsukh***, relied upon by the petitioners, this Court has specifically held that an application for grant of temporary injunction in a civil suit should be decided by the civil court on its own merits and not merely by deciding correctness or otherwise of the order passed by the Mamlatdar. The said judgment implies that order of temporary injunction can also be passed by a civil court contrary to final order passed under the Mamlatdars’ Courts Act.

39. The contentions raised by the petitioners as

recorded in the initial paragraph are pertaining to :-

- (a) limitation;
- (b) grant of new road under the guise of directions for removal of obstruction;
- (c) plaint is not filed and verified as prescribed under the statute and steps required for curing the defects are also not taken;
- (d) evidence is not recorded and opportunity of cross examination is not granted;
- (e) panchanamas are not drawn in accordance with prescribed procedure and
- (f) apart from this grounds are also raised with respect to merits which were not argued since the petitions were heard on the point of alternate remedy.

40. The contentions pertaining to limitation and creation of new road in excess of jurisdiction can be raised before the civil court in view of first principle in the matter of *Dhulabhai (supra)*, which states that even if jurisdiction of the civil court is excluded by the statute, suit will be maintainable in cases where provisions of the statute are not complied with.

This principle is reiterated in the matter of *Huseinmiya (supra)*.

41. Grounds pertaining to principles of natural justice can also be raised before the civil court in view of the clear exposition in the matter of *Dhulabhai* that a civil suit will be maintainable against order passed by a statutory tribunal, even if finality is attached to such order, if the tribunal has not acted in conformity with fundamental principles of judicial procedure. This principle is reiterated in *Huseinmiya* and *State Bank of Patiala (supra)*.

42. The above grounds can also be raised and entertained under Articles 226 and 227 of the Constitution of India. However, apart from grounds pertaining non-compliance with provisions of Act, principles of natural justice and error of jurisdiction, issues pertaining to disputed questions of facts are also raised in petitions arising out of Mamlatdars' Courts Act. The issues pertaining to facts are better left to be decided by a civil court, which is a court of empowered to record evidence and conclusively decide questions of facts and law both. As stated above, this Court

has very limited jurisdiction while dealing with questions of facts. It cannot reappreciate the evidence or even substitute its view with view taken by the authority, if the same is probable although the court may be inclined to take a different view. Such limitations and hindrances will not come in the way of litigants if the matter is decided by civil court. In the considered opinion of this Court, the remedy of challenging the orders before the civil court is therefore a more meaningful remedy where the entire controversy can be resolved finally.

43. Therefore, in the considered opinion of this Court, the jurisdiction of civil court extends to deciding matter falling within the jurisdiction of a Mamlatdar on merits and also to decide the correctness or otherwise of the orders passed by the Mamlatdar and/or the Collector under Sections 5 and 23 respectively of the Act.

44. The learned advocates for the petitioners contend that even if it is assumed that civil court will have jurisdiction to entertain challenge to orders passed by the Mamlatdar and Revisional Authority/Sub-Divisional Officer under the Act,

jurisdiction of this Court under Article 226 and 227 of the Constitution of India can never be barred. They place reliance on the judgment of the Hon'ble Supreme Court of India in the case of *L. Chandra Kumar Vs. Union of India and others* reported in *AIR 1997 SC 1125*. There cannot be any quarrel about this well settled legal proposition. The jurisdiction of this Court is certainly not barred, however, it is well settled that in cases where an equally efficacious remedy is available to the petitioner, normally High Courts should not exercise their jurisdiction under Article 226 or 227 of the Constitution of India.

45. This judgment/order should not be interpreted to mean that jurisdiction of High Court under Article 226 and/or 227 of the Constitution of India cannot be invoked in order to challenge orders passed under the provisions of Mamlatdars' Courts Act. It is merely held that remedy of civil suit is available in order to challenge orders passed by the authorities under the Mamlatdars' Courts Act and that the said remedy is more meaningful and effective remedy.

46. For the reasons above, this Court is of the opinion

that judgments in the matter of *Mangalabai and Baban* are *per incuriam* of *Dhulabhai and Huseinmiya* and therefore, cannot be followed as binding precedents for the proposition that the orders passed under the Mamlatdars' Courts Act cannot be challenged in a civil suit. Judgment in the matter of *Mohammad Khan S/o Rahim Khan* which holds that orders passed under the Mamlatdars' Courts Act can be challenged in the civil suit lays down the correct position of law.

47. In the matters of *Mangalabai and Baban* it is held that whenever a civil suit is filed with respect to a matter which is decided by a Mamlatdar or the Collector in exercise of revisional powers under the Act, the civil court should decide the suit on its own merits in the light of evidence brought before it and that it cannot decide the suit as if it is deciding an appeal against order passed by the Mamlatdar or the Collector. Having regard to the judgments in the matter of *Dhulabhai, Huseinmiya* and *Mohammad Khan Rahim Khan*, correctness of the order passed by the Mamlatdar or the Collector can be tested by a civil court. However, having regard to Section 22 and 23 of the Act, the law laid down in the said judgments that the civil court can independently

adjudicate the issue which is already decided by the Mamlatdar or the Collector cannot be doubted. The law laid down to that extent is correct.

48. The correct position of law is that civil court has jurisdiction to decide the correctness or otherwise of orders passed by Mamlatdar and Collector and also to independently adjudicate the matter on merits dehors of the decision rendered under the Act. In the considered opinion of this Court, it will be advisable that whenever a dispute is carried with respect to orders passed under the Act, apart from challenging the decision, the parties also include pleadings and lead evidence with respect to merits of the dispute. Whenever, a suit is filed against any adjudication by the authorities under the Act, the decree to be passed will be in the nature of declaration as regards correctness or otherwise of the order passed by Mamlatdar or Collector. Section 34 of the Specific Relief Act is not exhaustive as regards the declaration which a civil court is competent to grant. Likewise, jurisdiction to grant a decree for declaration is a matter of discretion. A declaratory decree cannot be claimed as a matter of right. In this regard it will be appropriate to refer to

judgment of the Hon'ble Supreme Court in the matter of ***Vaish Degree College Vs. Lakshmi Naraian*** reported in ***AIR 1976 SC 888***. The Hon'ble Supreme Court has referred to various decisions by different High Courts as also by this Court to hold as under :-

"26. It is manifestly clear from the authorities discussed above that the relief of declaration and injunction under the provisions of the Specific Relief Act is purely discretionary and the plaintiff cannot claim it as of right. The relief has to be granted by the court according to sound legal principles and ex debito justitiae. The court has to administer justice between the parties and cannot convert itself into an instrument of injustice or an engine of oppression. In these circumstances, while exercising its discretionary powers the court must keep in mind the well settled principles of justice and fair play and should exercise the discretion only if the ends of justice require it, for justice is not an object which can be administered in vacuum."

49. In view of the aforesaid legal position pertaining to declaratory reliefs, the civil court may refuse to grant a decree for declaration in cases where although the order may not be passed strictly in compliance with the provisions of the Act but the defendant is in a position to establish his right to the relief granted under the order impugned on the basis of evidence and justify the final decision. Such discretion will obviously be exercised on case to case basis. It is well settled that jurisdiction of this Court under Articles 226 and 227 is also a matter of discretion to be exercised judiciously and not a matter of right.

50. Since, the question that is being decided pertains to existence of alternate remedy of filing of civil suit, it must be reiterated that even in the light of ***Mangalabai and Baban*** on which the petitioners have placed strong reliance, the petitioners can be relegated to the remedy of filing civil suit in as much as once the matter is decided by the civil court on merits, the order passed either under Section 5 or Section 23 of the Act shall automatically be inoperative. This a person aggrieved by order passed by authorities under the Act can get rid of the same by filing a civil suit and seeking adjudication of the subject matter on merits.

51. In view of the aforesaid, it needs to be held that the remedy of filing a civil suit is an adequate alternate remedy and rather a more efficacious remedy for challenging the orders passed by Mamlatdar or Collector under the provisions of the Mamlatdars' Courts Act. The civil court has the jurisdiction to decide correctness or otherwise of the order passed by authorities under the Act. Likewise even in the absence of challenge to the orders passed by the authorities under the Act, the party aggrieved by the order can file a

substantive civil suit and get rid of the orders by establishing the case on merits and obtaining a decree contrary to the adjudication of the dispute by the authorities under the Act.

52. The preliminary objection relating to alternate remedy is therefore upheld.

53. Writ Petitions are dismissed granting liberty to the petitioners to avail of the alternate remedy of filing civil suit. Time spent in prosecution of the petitions, shall stand excluded for computation of period of limitation.

54. Interim orders dated 17.05.2022 in Writ Petition No.5074/2022, dated 19.07.2022 in Writ Petition No.7499/2022, dated 26.08.2022 in Writ Petition No.8819/2022, dated 26.09.2022 in Writ Petition No.8920/2022 and dated 08.04.2024 in Writ Petition No.3623/2024 are extended till 31st October, 2025.

55. The civil applications, if any, stand disposed of.

[ROHIT W. JOSHI, J.]