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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6480 OF 2013

WITH

CIVIL APPLICATION NO.1316 OF 2014

Dilip Nathu Bhambar & Anr.

..Petitioners.

V/s.

State of Maharashtra & Ors.

..Respondents.

Mr.Nitesh Bhutekar for the petitioners.

Mrs.M.P.Thakur, AGP for the respondent Nos.1 to 6.

Mr.Arun Harischandra Palekar for the respondent Nos.7 to 10 and for the applicant in CA.

**CORAM : A.S.OKA AND
A.K. MENON, JJ.****DATED : 27TH FEBRUARY, 2015****P.C. :-**

1. Heard the learned counsel appearing for the petitioners, learned AGP for the respondent Nos.1 to 6 and the learned counsel for the respondent Nos.7 to 10. This petition under Article 226 of the Constitution of India has been filed by the petitioners seeking implementation of the order dated 9th April, 2010 passed by the Tahsildar, Baglan in proceedings under section 5 of the Mamlatdar's Courts Act, 1906. The order of the Tahsildar has been confirmed by the order dated 10th March, 2011 passed by the Sub-Divisional Officer, Kalwan in a Revision Application. A second Revision Application filed against the said order has been dismissed by the Additional Collector, Malegaon by an order dated 21st April, 2011 on the ground that the same is not maintainable.

2. There is an affidavit filed by Mr.Ashwinikumar Suresh Potdar, Tahsildar Baglan, District Nasik. A letter dated 3rd June, 2011 addressed by the first petitioner to the District Collector as well as to a Social Worker has been annexed to the said affidavit. There is a specific assertion in the said letter (page 54 of the affidavit) that on 24th May, 2011 the encroachment on the road in question which is the subject matter of the order dated 9th April, 2010 was removed by the Naib Tahsildar. Further allegation in the said application is that now the obstruction to the road is created by the owner of the land bearing Gat No.83/2. It is stated that obstruction is created by one Keda Dakhal Bhamare near the land bearing Gat No.83/2. In the proceedings under section 5 of the Mamlatdar's Courts Act, 1906, the said Keda Bhamare was not a party. In the said affidavit of the Tahsildar and in the said letter addressed by the first petitioner, reliance is placed on the possession letter signed by the one Baijibai.

3. Thus, going by what is stated by the first petitioner in the said letter dated 3rd June, 2011, it becomes an admitted position that order dated 9th April, 2010 passed by the Tahsildar was executed and now a person who is not a party to the petition has allegedly encroached upon the said road.

4. Therefore, this petition cannot be entertained. At this

stage, the learned counsel appearing for the petitioners tried to submit that now there is an encroachment made by the respondent Nos.7 to 10, who were the parties to the proceedings. If that be so, the petitioners will have to take out appropriate proceedings in accordance with law.

5. We must also note here that in the letter dated 3rd June, 2011, the first petitioner has threatened to commit suicide. In the petition, there is an averment that the first petitioner tried to commit suicide. The order dated 25th November, 2013 makes it very clear that the first petitioner cannot take recourse to unconstitutional methods.

6. In view of the discussion made above, we decline to entertain this petition. The petition is accordingly rejected. However, all the remedies of the petitioners are kept open.

7. The Civil Application No.1316 of 2014 does not survive and hence the same is disposed of as such.

(A.K.MENON, J.)

(A.S.OKA, J.)