

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.251 OF 2017**

Shri. Sudhakar Vikram Gulve

..Petitioner

Versus

Lahu Dyandeo Gulve and others

..Respondents

Mr. Samir Kumbhakoni for the Petitioner.

Mr. R. S. Alange for the Respondent No.1.

CORAM : R. M. SAVANT, J.

DATE : 23rd MARCH, 2017

PC.

1 The writ jurisdiction of this Court is invoked against the order dated 28.10.2016 passed by the Sub Divisional Officer, Solapur No.2, Solapur. By the said order, the Revision Application filed by the Respondent No.1 came to be allowed and resultantly, the order dated 28.07.2016 passed by the Tahsildar, Akkalkot came to be set aside.

2 The proceedings in question are under Section 5 of the Mamlatdar's Court Act, 1906. The Petitioner herein had filed the application on the ground that the Respondents to the said application amongst whom was the Respondent No.1 had obstructed the way to Gat No.134 which belongs to the Petitioner. It was the case of the Petitioner that the right of way is from the western boundary of Gat Nos.5, 131, 135 and 7 which belonged to the Respondents. As per the procedure, the Tahsildar had carried out the site inspection and prepared a report. In the report, it has been mentioned that the road has been obstructed by

constructing a 'bandh' on the boundary of Gat No.5. The Tahsildar accordingly after giving opportunity to the parties had allowed the said application filed by the Petitioner by order dated 28.07.2016.

3 The Respondent No.1 aggrieved by the said order passed by the Tahsildar filed a Revision under Section 23 of the said Act before the Sub Divisional Officer No.2, Solapur. The Sub Divisional Officer had directed the Circle Officer to carry out spot inspection and submit a report. The Circle Officer had accordingly carried out spot inspection and submitted his report. The Sub Divisional Officer heard the parties and has by the impugned order dated 28.10.2016 allowed the Revision filed by the Respondent No.1 and thereby set aside the order dated 28.07.2016 passed by the Tahsildar. The Sub Divisional Officer held that since according to the Petitioner i.e. the Applicant the obstruction was allegedly caused on 04.05.2015 and since the application was filed on 06.06.2016, the said application was filed beyond six months of the alleged obstruction being caused and therefore was not maintainable. The Sub Divisional Officer also recorded that the Tahsildar had adjudicated the matter without considering the fact that whether the road was in existence and was being used by the villagers. The Sub Divisional Officer also found fault with the order passed by the Tahsildar on the ground that the Tahsildar has without taking into consideration

whether there is any alternate access available to the Petitioner i.e. the Applicant has adjudicated upon the said application filed under Section 5 of the said Act. The Sub Divisional Officer also recorded that though the application was filed under Section 5 of the said Act, the Tahsildar seems to have proceeded on the basis of Section 135 of the Maharashtra Land Revenue Code, 1966 which provision can be invoked for granting a new road. As indicated above, the Sub Divisional Officer has accordingly by the impugned order allowed the Revision and thereby set aside the order dated 28.07.2016 passed by the Tahsildar.

4 In my view, since the maintainability of the application itself is in question, namely that the application has been filed six months after the alleged obstruction has taken place on 04.05.2015, the order passed by the Sub Divisional Officer can be sustained on the said sole ground. However, the reasoning of the Sub Divisional Officer whilst setting aside the order passed by the Tahsildar cannot be faulted with. Resultantly, no case for interference in the writ jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed.

5 Needless to state that if any Civil Suit is filed, the same would be tried on its own merits and in accordance with law.

[R.M.SAVANT, J]