

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.10797 OF 2018

Shankar Appaji Ravan	...Petitioner
Versus	
Shivaji Janba Ravan & Ors.	...Respondents

**WITH
WRIT PETITION NO.10385 OF 2018**

Shivaji Janaba Ravan @ Shivaji Dnyandev Ravan and Ors.	...Petitioners
Versus	
The State of Maharashtra and Ors.	...Respondents

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Mr. Prathamesh B. Bhargude for the Petitioners in WP/10797/2018
Mr. Ganesh M. Mohite for the Petitioner in WP/10385/2018 and for
the Respondent in WP/10797/2018
Mr. Sachin H. Kankal, AGP for the Respondent No.14 in
WP/10797/2018 and for the Respondent Nos.1, 2 and 8 in
WP/10385/2018.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED: 30th JANUARY, 2019.

P.C.:-

Both these petitions arise from order dated 12th June, 2018 whereby the learned SDO has set aside the order dated 20th August, 2016 passed by the learned Tahasildar, Ajra, in an application under Section 5(2) of the Mamlatdar's Courts Act, 1906 (for short 'the Act') and had remanded the same with directions to decide the same afresh.

2. Aggrieved by the said order the Applicant as well as the Respondents in the said application under Section 5 of the Act have filed these writ petitions.

3. The Petitioners in Writ Petition No.10385 of 2018, was the Applicants in application under Section 5 of the Act and shall be hereinafter referred to as the Applicants. The Applicants under Section 5 of the Mamlatdar's Courts Act was filed alleging that the Respondents in the said Petition had obstructed their access. By order dated 20th August, 2016 the learned Mamlatdar allowed the said application. Being aggrieved by the order, the Respondents preferred a revision application. The Revisional authority remanded the proceedings with directions to the learned Mamlatdar to decide the application afresh. Being aggrieved by this order the Applicants have filed Writ Petition No.10385 of 2018 whereas the Respondents have filed the Writ petition No.10797 of 2018.

4. Mr. Prathamesh Bhargude, learned counsel for the original Respondents has submits that the Applicants have filed a civil suit wherein they have sought relief of permanent as well as temporary injunction in respect of the access, which is also the subject matter of

proceedings under Section 5 of the Act. He contends that in view of the provisions of Section 26(b) of the Act, the proceedings under Section 5 of the Act are not maintainable.

5. Mr. Ganesh Mohite, the learned counsel for the Applicants submits that the civil suit filed by the Applicants is basically for partition, whereas the proceedings under Section 5 is for removal of obstructions from the said access. He submits that the said access is not the subject matter of the suit and as such the bar of section 26(b) is not applicable to the proceedings under Section 5 of the Act.

6. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

7. It may be mentioned that proceedings under Section 5 of the Act which are summary in nature, enable the Mamlatdar to order removal of impediment or any obstruction on the access or natural flow of water. A plain reading of section 22 of the Act also indicates that the order passed under Section 5 (2) is not conclusive and the aggrieved party can seek relief from the civil court, which is not bound by the decision of the authorities under the Mamlatdar's Court Act.

The party in whose favour the Mamlatdar has passed the order can enjoy such order until the legal rights of the parties are adjudicated by the competent Civil Court. Furthermore, Section 26 (b) of the Act provides that no suit shall lie under this Act in respect of any removal of any impediment or of any dispossession, recovery of possession or disturbance of possession, that has been the subject of previous proceedings, to which the plaintiff or his predecessor in interest was a party, under this Act, or in a Civil Court or under Chapter XII of the Code of Criminal Procedure, 1898.

8. While considering the scope of the proceedings under Section 5(2) and the Bar under Section 26(b) of the Mamlatdar's Court Act in *Moti Jagta Vs. Indurai Bhaurai Desai, 1927 The Bombay Law Reporter, (Vol.XXX) 98* it has been held that the usual course for the parties is to have recourse to the Mamlatdar's Court for a speedy relief before they seek assistance of a civil court. It has been further held that Section 26 clause (b) bars the jurisdiction of the Mamlatdar when the issue of removal of impediment, of dispossession, recovery of possession or disturbance of possession is pending before the civil court.

9. In the instant case, the records indicate that the Applicants

had filed an application under Section 5 of the Act on 14.9.2015 wherein they had alleged that the Respondents had obstructed the access by putting cement poles, barbed wire fence, stones, etc. The Applicants had stated that they had no alternative access and hence sought removal of obstruction with further prayer to restrain the Respondents from obstructing them from using the said access. Based on the same cause of action, the Applicants also filed a civil suit on the same date i.e.14.9.2015 seeking relief of partition and permanent injunction. In paragraph 6 of the plaint, copy of which is annexed to the petition, the Applicants have averred that the Respondents had tried to obstruct the access by dumping stones and fixing cement poles. Based on the said averments the Applicants have sought relief of permanent as well as temporary injunction, seeking to restrain the Respondents from obstructing the said access.

10. The records thus reveal that the Applicants have already invoked the jurisdiction of the civil court in respect of the access, which is also the subject matter of proceedings under Section 5 of the Act. As stated earlier the proceedings before the Mamlatdar's Court are only summary in nature to provide speedy relief to the parties before they seek assistance of civil court. The Applicants having invoked the

jurisdiction of the civil court in respect of the said access and having also filed an application for interim relief, the bar under Section 26 (b) of the Act would be applicable. Hence, in view of filing of the civil suit, the learned Mamlatdar has no jurisdiction to entertain and decide the proceedings under Section 5 of the Act.

11. Hence, the following order :-

- (i) The Writ Petition No.10797 of 2018 is allowed.
- (ii) The impugned order dated 12th June, 2018 passed by the learned SDO in revision Application No.SR/08/2017 as well as the order of the Mamlatdar dated 20th August, 2016 and proceedings No.SR/06/2015 are hereby quashed and set aside.
- (iii) The proceedings under Section 5 of the Act are dismissed with liberty to the parties to raise all the points and contentions before the Civil Court.
- (iv) Writ Petition No.10385 of 2018 stands dismissed.

12. It is made clear that I have not gone into the merits of the case. All points and contentions are specifically kept open.

(SMT. ANUJA PRABHUDESSAI, J.)