

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

WRIT PETITION NO. 2709 OF 2018

Vitthal Mahadev Patil & Anr.

....Petitioners

V/s.

Shivappa Bhima Bhangi (since decd.

Through legal heirs) :

Sugandha Shivappa Bhangi & Ors.

....Respondents

Mr. Chetan G. Patil for the petitioners.

Mr. S.D. Rayrikar, AGP for respondent nos.15 and 16.

Mr. Vanraj Shinde for respondent nos.1A to 1D, 2B, 2D, 6A,
7, 8A, 9, 12B and 13.

**CORAM: SMT. ANUJA PRABHUDESSAI, J.
DATED : 09th JANUARY, 2019.**

P.C.:

. The petitioners herein have challenged the order dated 28/11/2017 whereby the respondent no.15 – Sub-Divisional Officer, Gadhinglaj Division, Gadhinglaj has dismissed his revision application challenging the order dated 21/01/2016 passed by Tahasildar, Gadhinglaj under Section 5 of Mamlatdar's Court Act, 1906.

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

3. The respondents had filed an application under Section 5 of Mamlatdar's Court Act claiming that the petitioners had obstructed the passage passing through Gat No.309 situated at Bugadikkat, Tal. Hatkanangale. The records indicate that the learned Mamlatdar after considering the evidence on record as well as the site inspection memo, allowed the application and directed the petitioners to remove the obstruction and further restrained them from interfering with the use of the passage passing from Gat No.309. The Revision Application filed by the petitioners has been dismissed by order dated 28/11/2017. Aggrieved by these orders, the petitioner has filed the present petition under Article 227 of the Constitution of India.

4. Mr. Chetan Patil, learned counsel for the petitioners submits that the application under Section 5 was not filed by the respondents but was filed by Secular Movement. He further contends that some of the persons on whose behalf the said application was filed had already expired. He contends that the order of the Mamlatdar is cryptic and that he has not given any findings on the user of passage by the respondents herein. He contends that the learned Tahasildar has materially erred in passing the order under Section 5 of Mamlatdar's Court Act.

5. The learned counsel for the respondents submits that the Tahasildar has followed the procedure prescribed under Section 19 of Mamlatdar's Court Act and after considering the evidence adduced by the respective parties as well as the spot panchanama, recorded a finding about existence of the passage, user of the passage and obstruction of the said passage by the petitioners. Under the circumstances, the Mamlatdar has not committed any illegality in passing the order under Section 5 of the Act.

6. The application under Section 5 of the Mamlatdar's Court Act was signed by respondent nos.2A, 2C, 2E, 3A, 5, 6A, 6B1, 6E, 7, 8A, 9, 10 and 12A. The mere fact that the application is filed on the letterhead of Secular Movement does not vitiate the proceedings.

7. The records reveal that the Mamlatdar had heard both the parties and followed procedure as contemplated under section 19 of the Act. He inspected the property in presence of the parties and recorded finding about existence of passage through Gat No.309 and that the petitioner herein has obstructed the same. The order is neither perverse nor illegal and does not warrant interference.

8. A plain reading of Section 22 would clearly indicate that the order passed under the Act are not conclusive and the aggrieved party can seek relief from the Civil Court. Under the circumstance, I do not find any merits in the petition. Petition is accordingly dismissed.

9. At this stage, the learned counsel for the petitioner submits that the interim relief granted earlier may be continued so as to enable him to seek relief from the Civil Court.

10. In the light of the above statement, the ad-interim relief granted earlier to continue for a period of one week.

(SMT. ANUJA PRABHUDESSAI, J.)