

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

WRIT PETITION NO. 10780 OF 2016

Shri.Ramshwar Gautam Gaikwad & Ors. ..Petitioners

V/s.

Shri.Bhairu Pralhad Jagdale & Ors. ..Respondents

Mr.C.K. Bhangoji for the Petitioners.

Mr.Sharad Bhosale for Respondent Nos.1 and 2.

Mr.S.D. Rayrikar, AGP for Respondent Nos.3 and 4-State.

CORAM : C.V. BHADANG, J.

DATE : 20th JANUARY 2020

P.C.

1. Heard learned counsel for the parties.

2. This petition can be disposed of on a short count. The petitioners had approached the learned Mamlatdar under Section 5 of the Mamlatdar Courts Act, 1906 ('Act' for short) alleging that the private respondents, had obstructed their access on 05th January 2013. The learned Mamletdar by an order dated 14th July 2015 allowed that application, which order was subject matter of challenge, at the instance of the private respondents, before the Sub Divisional Officer ('SDO' for short) at Solapur Revision Application

No.27 of 2015 under section 23(2), of the said Act. The learned SDO by the impugned order dated 11th May 2016 has allowed the Revision Application *inter alia* on two grounds, first that the record does not disclose that the private respondents (the applicants before the SDO) were afforded an opportunity of hearing and secondly the obstruction of the access is alleged on 05th January 2013 while the application in proper format was received in the Office of the Mamaletdar on 2nd August 2013 and thus it was beyond the period of six months, which is the limitation provided under the said Act.

3. The learned counsel for the petitioner pointed out that prior to the application dated 05th January 2013 there was an application filed before the Mamlatdar on 04th March 2013 which was within the period of limitation. Secondly the learned counsel has pointed out the ground raised by the private respondents, before the SDO that the spot inspection was carried out without a notice. The learned counsel has pointed out the notice dated 13th February 2015 by which the learned counsel submits that the Mamletdar had given the notice of spot inspection to be held on 13th March 2015. The learned counsel has also pointed out that the respondent No.2 had intimated to the Mamletdar that he will not able to attend the proceedings on account of the difficulty to he is on leave. He

therefore, submit that ground on which the SDO has interfere with the order of the Mamletdar, are not sustainable.

4. The learned counsel for the respondents has pointed out that the petitioners has approached the Civil Court in Civil Suit No.317 of 2014 in which the learned Joint Civil Judge Junior Division, Barshi has granted ad-interim ex-party injunction in favour of the petitioners and against the private respondents on 28th March 2014 and thus order is still in force. He therefore, submit that the no case for interference is made out.

5. It transpire during the course of the arguments at bar the parties has made an attempt to amicable settlement before the Tantha Mukti Committee and there are minutes recorded by which the dispute was settled. In such circumstances and particularly in view of the fact that the petitioners have already approached the Competent Civil Court. In the present case the petitioners has already recourse to taken remedy and that remedy is already available to the petitioner. The learned counsel for the petitioner points out that there is still some dispute as to who would bare the expenses. It is not necessary in the circumstances, to go into the said aspect and there shall be the Civil Court would be decided on

its own merits. In that view of the matter the petition is disposed of with no order as to costs.

6. Needless to mentioned that the Civil Court shall decide the suit on its own merits without being influenced by any of the finding and observations by the SDO in this case. In the circumstance, there shall be no order as to costs.

C.V. BHADANG, J.

**Nilam
Kamble**

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Nilam Kamble
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