

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.13491 OF 2021

**SUJEET RAMESH SALUNKE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS SECRETARY AND OTHERS**

...
Advocate for Petitioners : Mr. V.D. Sapkal, Senior advocate i/b. Mr. S.R.
Sapkal
AGP for Respondent/State: Ms. D.S. Jape
...

CORAM : MANGESH S. PATIL, J.

DATE : 04.12.2021

PER COURT :

Heard the learned Senior advocate Mr. V.D. Sapkal for the petitioners.

2. The petitioners who are not parties to a proceeding under Section 5(2) of the Mamlatdars' Courts Act, 1906 or to the Revision preferred by the person who has suffered that order, are seeking to take exception to the order passed by the Tahsildar on the ground that the order has the tendency of affecting their rights and interest in as much as it recognizes existence of a way affecting land Gut No.85 in which they have a share as can be seen from the Revenue Record.

3. The learned Senior advocate would submit that without even issuing any notice to the petitioners in spite of specific objection raised by the respondent in the original proceeding regarding their non-joinder, no notice was ever issued to them. They would be put to irreparable loss and

inconvenience if they are made to suffer the order. Though the alternate remedy of preferring a suit is available to them, since the principles of natural justice have not been followed, this Court has the power to cause interference. In the alternative, Mr. Sapkal would submit that the petitioners would file a substantive proceeding in the form of suit, however, some breathing time may be granted by staying operation of the order of Tahsildar in the peculiar facts and circumstances of the case.

4. I have carefully considered the submissions and perused the papers. It is a matter of record that the petitioners were neither the party to the proceeding before the Tahsildar under Section 5 of the Mamlatdars' Courts Act nor was any notice issued to them calling upon to obey the directions. Needless to state that the decision would only bind the persons who are parties to the proceeding. The petitioners being strangers, it would not bind them *albeit* the order also take into its sweep land Gut No.85 in which they seem to have right, title and interest. Allowing the petitioners now to challenge the order would in a way call upon this Court to decide the rights and interest of the petitioners which are not the points in issue before the authorities below.

5. Once it is understood that the order passed by the authorities would not be binding on the petitioners, they being not the party, it would always be open for them to put up their grievance and seek appropriate remedy by filing a separate suit if they so chose. Allowing them to now intervene would vex the issue. If the respondents who are the original

applicants before the Tahsildar have not put up any grievance against the petitioners alleging any obstruction at their hands, one cannot comprehend as to how now the respondents applicants can be made to justify the order even *qua* the petitioners. It is in view of such peculiar state of affairs, the Writ Petition cannot be entertained and deserves to be dismissed.

6. Coming to the request made by the learned advocate Mr. Sabkal for granting *status quo*, again, this being not the original proceeding and since it has already been observed herein above that the order will not bind the petitioners, no such order for *status quo* can be granted.

7. The Writ Petition is dismissed keeping open all the remedies to the petitioners as are available in law.

(MANGESH S. PATIL, J.)