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

WRIT PETITION NO. 8497 OF 2019

DILIP MADHAV UGALE & ORS. ..PETITIONERS

vs.

CHANDRAKALA SHIVAJI UGALE & ORS. ..RESPONDENTS

Mr. Prashant D. Patil for the petitioners.

Mr. Rameshwar Gite for respondent Nos. 1 to 3.

Mr. P.P. Pujari, AGP for respondent Nos. 4 and 5.

CORAM : M.S.KARNIK, J.

DATE : JANUARY 21, 2021

P.C.:-

Heard learned counsel for the parties.

2. In paragraph 10 of the Petition it is stated by the petitioners that the petitioner Nos. 1 and 2 have already removed the obstructions of the fencing wire and the portion of the nala was already kept open. The petitioners therefore have in effect agreed to abide by the order passed by the Tahsildar dated 3/12/2018 passed under Section 5 of the Mamlatdar Court Act, 1906.

3. In this Petition, it is the contention of the petitioners that the respondents are taking advantage of the order passed by the

Tahsildar and are trying to make use of a larger portion of the pathway than what has been granted by the Tahsildar.

4. This position is disputed by learned counsel for the respondent Nos. 1 to 3. Learned counsel for the respondent Nos. 1 to 3 submits that the respondent Nos. 1 to 3 are bound to abide by the order passed by the Tahsildar and that they are using the pathway as permitted by the Tahsildar.

5. There being disputed questions of fact, this cannot be decided in this Petition. It is open for the petitioner to resort to the appropriate remedies including filing a civil suit to establish their claim and for such other reliefs as permissible. Suffice it to observe that the petitioners as well as respondent Nos. 1 to 3 say that they are acting in consonance with the order of the Tahsildar. For any other relief which the petitioners or the respondent Nos. 1 to 3 want over and above that what has been granted by the Tahsildar, it is always open for them to resort to the appropriate remedies under law. Keeping all contentions open, the present Petition is disposed of.

6. Considering that the petitioners have no objection to the respondent Nos. 1 to 3 using the pathway in terms of what has

been granted by the Tahsildar and subject to the petitioners permitting the respondent Nos. 1 to 3 using pathway in terms of what has been provided by the Tahsildar, it is clarified that the respondent Nos. 1 to 3 will strictly abide by the order passed by the Tahsildar and they will not use more area of the pathway than what has been provided by the Tahsildar. If at all any clarification about the width of the road is required, the parties may either approach the Tahsildar or may resort to such other proceedings including filing a civil suit to establish their claim.

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7. The Writ Petition is disposed of accordingly.

(M.S.KARNIK, J.)