

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 1377 OF 2020

- PETITIONERS** : 1] Vijay S/o Digambar Bhirad,
Aged about 50 years, Occu. Agriculturist,
R/o Shivaji Nagar, Akola,
Tq. and Dist. Akola.
- 2] Ramdas S/o Shriram Rupnare,
Aged about 48 years, Occu. Agriculturist,
R/o Dabki Road, Akola, Tq. & Dist. Akola.
- 3] Pandurang S/o Haribhau Amale,
Aged about 47 years, Occu. Agriculturist,
R/o Dabki Road, Akola, Tq. & Dist. Akola.

// **VERSUS** //

- RESPONDENTS** : 1] Naib Tahsildar (Revenue), Balapur,
Dist. Akola.
- 2] Ajay S/o Sambajirao Ruikar,
Aged about 45 years, Occu. Agriculturist,
- 3] Anil S/o Rameshwar Kutafale,
Aged about 40 years, Occu. Agriculturist,
- 4] Sanjay S/o Divakrrao Kutafale,
Aged about 42 years, Occu. Agriculturist,
- 5] Shriram S/o Laxmanrao Kutafale,
Aged 63 years, Adult, Occu. Agriculturist,
- 6] Vijay S/o Ganeshrao Kutafale,
Aged about 50 years, Occu. Agriculturist,
- 7] Ganesh S/o Laxmanrao Kutafale,
(Dead on 26/5/18 but shown in application)
- 2 to 6 All R/o Shivaji Nagar, Near Shivcharan
Mandir, Akola, Tq. and Dist. Akola.

Shri S. A. Mohta, Advocate for the petitioners
Shri I. J. Damle, A. G. P. for respondent no.1
Shri G. C. Khond, Advocate for respondent nos.2 to 7

CORAM : V. M. DESHPANDE, J.
DATED : JANUARY 14, 2021

ORAL JUDGMENT

1. **RULE.** Rule is made returnable forthwith. Heard finally by consent of the learned counsel for the parties.

2. Heard Shri Shyamsundar A. Mohta, learned counsel for the petitioners, Shri Indranil Damle, learned Assistant Government Pleader for respondent no.1 and Shri Gaurav Khond, learned counsel for respondent nos.2 to 7.

3. The present writ petition is filed challenging the order dated 05.02.2020 passed by respondent no.1 in the proceedings bearing case No. MCA-5/Gaygaon/03/2019-20, whereby the preliminary objection raised by the petitioners is rejected. The objection was pertaining to limitation.

4. Respondent nos.2 to 7 had filed an application before respondent no.1 – Naib Tahsildar/Mamlatdar pointing out that the present petitioners have obstructed their way to approach their own field and due to such obstruction, they are unable to cultivate their land. They also prayed for removal of obstruction. The said application filed by respondent nos.2 to 7 was allowed by respondent no.1 vide order dated 06.01.2018 and the petitioners herein were directed to remove the obstruction.

Being aggrieved by the same, the present petitioners filed revision application under Section 23 of the Mamlatdar's Court Act, 1906, however the same was also dismissed by the learned Additional Collector, Akola by order dated 30.03.2019.

Being aggrieved by the said, the present petitioners approached this Court by filing Writ Petition No. 2913 of 2019 and this Court (Coram : Z. A. Haq, J.) on 19.06.2019 set aside the orders and liberty was granted to the present respondent nos.2 to 7 to avail the remedy by filing appropriate proceedings according to law.

5. Accordingly, respondent nos.2 to 7 filed an application in the Court of learned Tahsildar, Balapur on 09.07.2019. The said proceedings were registered as case No. MCA-5/Gaygaon/03/2019-20.

In the said proceeding, present petitioners filed an objection on the ground that the subsequent proceeding is barred by principle of *res judicata* and also barred by limitation. After hearing the present petitioners, who objected the subsequent proceeding filed on behalf of respondent nos. 2 to 7, the respondent no.1/Mamlatdar by the impugned order, dismissed the objection.

6. The subsequent proceedings, in which the impugned order is passed, are filed by the present respondent nos.2 to 7 in view of the liberty and directions given to them by this Court in Writ Petition No. 2913/2019. Further, as per the petitioners, the application filed by respondent nos.2 to 7 is barred by limitation. Even in the first round of litigation, the question of limitation was there inasmuch as though the said point was not agitated before the Mamlatdar, the said issue was raised by the present petitioners before learned Additional Collector in the revision proceedings. However, it was found by this Court that the learned Additional Collector did not adverted to the said issue and dismissed the application filed on behalf of the present petitioners considering merits of the matter.

7. After the remand, as on today, written statement to the

application filed by respondent nos.2 to 7 is not filed. Without filing the written statement, the petitioners have raised preliminary objection principally on the ground of limitation, which is turned down by the learned Mamlatdar.

8. The issue of limitation is always a mixed question of facts and law. It would be always open for the parties to adduce evidence on the said issue. Merely by raising an objection, such an important issue cannot be decided.

9. In the case at hand, the main proceedings are still pending before the learned Mamlatdar, in which even the written statement is not filed by the present petitioners. Thus, the petitioners are approaching this Court against the interlocutory order. It shall be always open for the petitioners to raise the question of limitation in the written statement and it will be open for the parties to lead evidence. Though the proceedings before the learned Mamlatdar are summary in nature, the issue of limitation may go to the root of the matter. Such permission will have to be given to the parties to prove the said issue. Hence, I pass the following order :

ORDER.

1. The Writ Petition is dismissed.
2. The interim order passed by this Court (Coram : Manish Pitale, J.) on 11.03.2020 stands vacated.
3. Looking to the fact that respondent nos.2 to 7 have also filed an application i.e. CAW No. 1446/2020 for grant of road to access to their agricultural field, the respondent no.1 is directed to decide the main application as early as possible preferably within a period of three months from the date of receipt of this order. It shall be open for the petitioners to file their written statement in the meanwhile.
4. It will also be open for respondent nos.2 to 7, during pendency of the proceedings before the said Court, to file an application for grant of road to access to their field and if such an application is filed, the same will be decided by the learned Mamlatdar/ respondent no.1 on its own merit.
5. The parties i.e. petitioners and respondent nos.2 to 7 are directed to appear before the learned Mamlatdar, Balapur/respondent no.1 on 22.01.2021.
6. Rule stands discharged. No order as to costs.

7. Since, main proceeding i.e. Writ Petition No. 1377/2020 is dismissed, nothing survives in Civil Application (CAW) No. 1446/2020. The same is disposed of.

JUDGE

Diwale

Parag
Diwale

Digitally signed
by Parag
Diwale
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