

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

WRIT PETITION NO. 2878 OF 2022

**VATSALABAI NARAYAN KALAME AND OTHERS
VERSUS
NANDABAI BABURAO INDRALE AND OTHERS**

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Advocate for Petitioners : Mr. Patil Milind Madhukar
AGP for Respondent-State : Mr. S. N. Kendre
Advocate for Respondent Nos. 1 to 3 : Mr. Shendurnikar Pushkar S.

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**CORAM : NITIN B. SURYAWANSHI, J.
DATE : 26th APRIL, 2022.**

P. C.

1. The Petitioners are aggrieved by the registration of plaint filed by the Respondents under Section 5 of the Mamlatdars' Courts Act, 1906. The Petitioners have challenged the order dated 2nd September, 2021 passed by the Tahasildar, thereby rejecting the objection raised by the Petitioners, registering the plaint of the Respondents and fixing the date for site inspection.

2. The learned Advocate for the Petitioners vehemently submitted that by order dated 30th December, 2000 passed by the Tahasildar under Section 143 of the Mah. L. R. Code, way is given to the Respondents

from the boundary of Gat No. 148 and 84. According to the Petitioners, Regular Civil Suit No. 310/2002 was filed by the Petitioners, wherein the said order passed by the Tahasildar, is confirmed. In that view of the matter, the proceeding filed by the Respondents before the Tahasildar under Section 5 of the said Act, are not maintainable.

3. If there is a cause of action, the Respondents are entitled to file proceeding under Section 5 of the said Act. The objection of the Petitioners that the said plaint is not in prescribed proforma and provision of Sections 7, 8, 9, 11 of the said Act, are not followed, while admitting the plaint, can be considered by the Respondent/Tahasildar at the time of final adjudication of the said proceeding. Merely, because the plaint is admitted and spot inspection is directed to be conducted, no prejudice is caused to the Petitioners. In that view of the matter, this Court of the considered view that there is no substance in the challenge raised by the Petitioners in the present petition.

4. Writ petition is dismissed by granting liberty to the Petitioners to raise objection about the maintainability of and continuation of the

proceeding filed by the Respondents. All contentions of the respective parties are kept open.

[NITIN B. SURYAWANSHI, J.]

Najeeb..