

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7806 OF 2015**

Shri. Haribhau Dhondiba Khomane & Ors. ...Petitioners
V/s.
Shri. Tatyaba Bapurao Malshikare & Ors. ...Respondents

Mr. Abhijit P. Kulkarni a/w Sweta Shah, for the Petitioners.
Mr. P. P. Pujari, AGP for Respondent-State.

**CORAM : MADHAV J. JAMDAR, J.
DATED : 20th July, 2022**

P.C. :

1. Heard Mr. Abhijit Kulkarni, learned counsel appearing for the Petitioners.
2. In this Writ Petition, the Petitioners have challenged the order dated 23rd April, 2012 passed by Tahsildar, Baramati in Case No. Rasta/S.R./11/2011 filed under Section 5 of the Mamlatdar's Courts Act, 1906 (hereinafter referred to as "the said Act") as well as order dated 26th July, 2013 passed by Sub-Divisional Officer, Baramati Sub-Division, Baramati. The said Application under Section 5 of the said Act was filed by the present Respondent Nos. 1 to 4. By the impugned order dated 23rd April, 2012, the said Application was allowed and the present Petitioners were directed not to interfere and object the

Respondent Nos. 1 to 4 from user of the road passing through Gat No. 155 and Gat No. 154. The present Petitioners challenged said order by filing Revision Application No. 40 of 2012 under Section 23 (2) of the said Act. The said Revision was dismissed by Sub Divisional Officer, Baramati by impugned order dated 26th July, 2013.

3. Mr. Kulkarni submitted that both the orders are illegal and perverse. He submitted that objections raised by the Petitioners are not considered by the authorities.

4. The impugned orders in the present Writ Petition are dated 23rd April, 2012 and 26th July, 2013. Thus the said orders are in operation at least since 2013.

5. The Petitioners have filed civil proceedings bearing Regular Civil Suit No. 442 of 2013 and the said Suit is pending. This Court in *Vishwanath S/o Rambhaji Bhalerao & Anr. Vs. Usha w/o Pralhad Kasbe*¹ held that, the orders passed under the said Act would be subject to the decision of civil Suit. This Court in *Bhaskar Shankar Gaikwad Vs. Shivaji Anandrao Jadhav & Ors*² has also held that, the observations and the findings recorded in the orders passed under the said Act shall not bind if the aggrieved person takes recourse to the

¹ 2011 (1) Mh.L.J. 603

² 2020 SCC OnLine Bom. 3199

remedy before the Civil Court.

6. In the present case, the Petitioners have already taken recourse to the remedy before the Civil Court by filing the aforesaid civil Suit. In view of the same although I am not inclined to exercise Writ Jurisdiction under Article 227 of the Constitution of India, in the facts and circumstances of this case, it is clarified that the impugned orders in the present Writ Petition are subject to the decision in the said civil Suit.

7. The Writ Petitions is disposed of in aforesaid terms with no order as to costs.

(MADHAV J. JAMDAR, J.)