

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

WRIT PETITION NO.7433 OF 2018

- 1) Dilip s/o Manohar Sitre
Aged about 50 years,
Occ: Agriculturist,
R/o Hiwarkhed, Tah. Telhara,
District Akola.
- 2) Sunil s/o Manohar Sitre
Aged about 45 years,
Occ: Agriculturist,
R/o Hiwarkhed, Tah. Telhara,
District Akola.
- 3) Anil s/o Manohar Sitre
Aged about 35 years,
Occ: Agriculturist,
R/o Hiwarkhed, Tah. Telhara,
District Akola.
- 4) Gajanan s/o Ramchandra Sitre
Aged about 52 years,
Occ: Agriculturist,
R/o Saundala, Tah. Telhara,
District Akola.

..... **PETITIONERS**

...VERSUS...

- 1) Smt. Padmatai w/o Lakshman Sitre
Aged about 47 years,
Occ: Housewife,
R/o Near Murarka School,
Anand Sagar Road, Near Bhoot Bunglow,
Shegaon, Tah. Shegaon,
District Buldhana.
- 2) Naib Tahsildar, Telhara,
District Akola.
- 3) Additional Collector, Akola.

..... **RESPONDENTS**

Mr. S. V. Sohoni, Advocate for Petitioners.
Mr. S. D. Chande, Advocate for Respondent 1.
Mr. M. A. Kadu, AGP for Respondents 2 & 3/State.

CORAM: **ROHIT B. DEO, J.**
DATE: **7th MARCH, 2022.**

ORAL JUDGMENT:

Heard. Rule. With consent, the petition is finally heard.

2. The petitioners have suffered concurrent orders under the Mamlatdars' Courts Act, 1906 (Act).

3. The grievance of the petitioners is that that the application under Section 5 of the Act which is preferred, on 16.01.2017 was hit by limitation since the cause of action, even according to the plaint arose on 25.06.2016. The other objection to the direction issued by the authority not to obstruct the way of the contesting respondents is that the plaint was not affirmed nor is there compliance of the statutory provisions which mandate that the application under Section 5 of the Act shall have to be treated as a plaint. Support is drawn from the decision in ***Gaurakshan Sansthan, Murtizapur v. State of Maharashtra and others, 2019(6) Mh.L.J. 473.***

4. In the context of the order which I propose to make, it would not be necessary to delve deeper in the respective narratives.

5. I am satisfied, on plain reading of the plaint, that the same does not confirm with statutory requirements. In so far as the objection on the ground of limitation is concerned, since I intend to remand the matter to the Mamlatdar, all contentions including the objection on the ground of limitation can be kept open for adjudication.

6. The orders impugned are quashed.

7. The matter is remitted to the learned Mamlatdar Court for fresh decision in accordance with law.

8. The petitioners are permitted to cure the defect in the plaint and in the alternate the Mamlatdar may act under Section 8 of the Act.

9. Needless to observe, if the petitioners deem fit, appropriate civil proceedings may be instituted without pursuing the remedy under the Act.

10. The petition is allowed and disposed of in the aforestated terms.

JUDGE

NSN