

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

WRIT PETITION NO.2755 OF 2021

1. Nandabai Sabaji Ware,
Age: 55 years, Occu.: Agri / Household,
R/o.: Sonewadi Chas,
Tq. and Dist.: Ahmednagar
 2. Sabaji Khandu Ware,
Age: 65 years, Occu.: Nil,
Lunatic, Through Gardian, Son,
Prashant Sabaji Ware,
Age:25 years, Occu.: Agri,
R/o.: As above
- .. Petitioners
(Orig. Respondents)**

Versus

1. The State of Maharashtra,
Revenue and Forest Department,
Mantralaya, Mumbai,
2. Sub Divisional Officer,
Ahmednagar
3. Mamlatdar / Tahsildar,
Ahmednagar
4. Gorakhnath Nana Ware,
Age: 60 years, Occu.: Agri,
R/o.: Sonewadi,
Tq. and Dist.: Ahmednagar
5. Gajanan Nana Ware,
Age: 68 years, Occu.: Agri,
R/o. As above
6. Vilas Nana Ware (Died) Lrs.,
6/1 Hausabai Vilas Ware,
Age: 60 years, Occu.: Agri,
R/o. As above

6/2 Vinod Vilas Ware,
Age: 35 years, Occu.: Service,
R/o. As above

6/3 Atul Vilas Ware,
Age: 32 years, Occu.: Service,
R/o.: As above

7. Babasaheb Khandu Ware,
Age: 50 years, Occu.: Agri,
R/o. As above

.. Respondents
(Orig. Applicant No.1 to 3)

...

Advocate for Petitioners: Mr. Pradeep K. Palve
AGP for Respondent/State: Mr. K. B. Jadhavar
Advocate for Respondents No.4, 5, 6/1 to 6/3 & 7:
Mr. Parag V. Barde

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CORAM:	ARUN R. PEDNEKER, J.
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Reserved on:	31.08.2023
Pronounced on:	31.10.2023

JUDGMENT:

1. **Rule.** Rule made returnable forthwith.
With consent of parties, the petition is taken up
for final hearing.

2. Heard Mr. Pradeep K. Palve, learned
counsel for the petitioners, Mr. K. B. Jadhavar,
learned AGP for the Respondent / State and
Mr. Parag V. Barde, learned counsel for
respondents no.4, 5, 6/1 to 6/3 & 7.

3. By the present writ petition the petitioners are challenging the orders passed by respondent no.2 - The Sub Divisional Officer, dated 08.01.2021, passed in R. T. S. Revision No.4 of 2020 and judgment and order dated 18.03.2020 and amendment order dated 17.06.2020, passed by respondent no.3 - Mamlatdar / Tahsildar, in Rasta Case No.14 of 2019, whereby, the authorities were pleased to allow the application of the present respondents under section 5(2) of the Mamlatdars' Courts Act, 1906 for removal of obstruction on the existing pathway.

4. The case as depicted in the petition is that respondents no.4 to 6 filed an application proposed as Rasta Case No.14 of 2019, before respondent no.3 - Mamlatdar / Tahsildar, under section 5(2) of the Mamlatdars' Courts Act, 1906, on 10.06.2019 for removal of obstruction from the pre-existing road routed to their fields situated at village Sonewadi, Taluka and District - Ahmednagar. Respondent no.3 - Mamlatdar / Tahsildar in presence of respondents no.4 and 5

visited the spot and examined the spot in presence of respondents and prepared a map and observed that there is foot way seen in part of gut no.196. The petitioners by filing written statement contested the said application and submitted that respondents no.4 to 6 are already having permanent fixed tar road from the southern side of their land which they are using since beginning and the road is mentioned and located and marked in village map itself. In the present application before respondent no.3 - Mamlatdar / Tahsildar, he visited the spot and the petitioners contended that it was a belated application beyond the period of 6 months and that the procedure contemplated has not been followed by the Mamlatdar. It is, thereafter, the Mamlatdar directed removal of obstruction from the gut no.196 from the petitioners area. The petitioners challenged the said order before respondent no.2 - the Sub-Divisional Officer.

5. Mr. Pradeep K. Palve, learned counsel for the petitioners further submits that there was a

correction made out in original order of the Mamlatdar in the nomenclature. The petitioners filed the revision petition challenging the correction of the same. Thereafter, the revisional authority also dismissed the application filed by the petitioners. The primary contention is that the application is beyond limitation and, thus, there is no jurisdiction in the authorities concerned to pass the order under the Mamalatdars' Court Act directing opening of the road.

6. On perusal of the plaint before the Mamlatdar under section 5 of the Act that on 16.09.2018, the road was obstructed by the petitioners by putting some stones and branches of trees. On para 5 it is observed that obstruction was created on 16.09.2018, however, at para 9 the date 16.09.2018 has been corrected as 16.04.2019 and the application is filed on 10.06.2019.

7. The response filed by the petitioners there is no contention raised that the application is barred by limitation and that the obstruction,

if any, was at a prior point of time as indicated in para 5 of the plaint and not as reflected in para 9 of the plaint. The learned counsel for the petitioners has submitted that there was typing error in the plaint in para 5, which are rectified at para 9 and that the cause of action is clearly mentioned as 16.04.2019, by striking of the date 16.09.2018. This part is not disputed by the learned counsel appearing for the petitioners in their written statement before the Mamlatdar. Thus, from the date of the cause of action i.e. 16.04.2019, as mentioned in the plaint, the application filed is within six months of the cause of action. The limitation being a mixed question of fact and law, the petitioners having not contested submission of the plaintiffs by leading evidence that the cause of action arose much before 16.04.2019, and, thus, the plaint is within limitation.

8. However, if the petitioners are aggrieved by the orders passed under the Mamlatdars' Courts Act, 1906, it is to be noticed that the

proceedings under the Mamlatdars' Courts Act, 1906 are summary in nature and that the aggrieved party can initiate a civil suit to claim their rights over their lands including the passage on which the road is directed to be opened. In terms of section 22 of the Mamlatdars' Courts Act, 1906 the orders passed by the civil court will override the orders passed under the Mamlatdars' Courts Act, 1906. Thus, the petitioners are at liberty to file an appropriate proceedings before the civil court to assert their rights over the suit property and that the orders passed by the civil court will have a overriding effect on the orders passed by the Mamlatdar under the Mamlatdars' Courts Act, 1906.

9. In view of the same, the writ petition is disposed of with above observations. Rule is discharged with above observations.

[ARUN R. PEDNEKER, J.]