

SA Pathan

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO.7814 OF 2023**

Vishwas Lakshman Shinde ... Petitioner  
**V/s.**  
Maruti Ananda Shinde & Ors. ... Respondent

SHABNOOR  
AYUB  
PATHAN  
ADVOCATE  
PUNJABI  
1975-2011-11-03  
1975-2011-11-03

Mr. Kuldeep V. Nikam i/by Mr. Prasad Avhad, for  
Petitioner.

**CORAM : AMIT BORKAR, J.**

**DATED : NOVEMBER 3, 2023**

**P.C.:**

1. By the impugned order, Courts below have granted injunction against defendant from constructing road on the suit property.
2. On perusal of the impugned order, it appears that the Courts below granted injunction to the plaintiff observing that till the defendants get declaration from Tahasildar regarding existence of road, the plaintiff is entitled to injunction.
3. Learned Advocate for the petitioner points out that the application under Section 5 of Mamlatdars Court Act, 1906 is pending before the Tahasildar. Therefore, it is obvious that grant of injunction by the Courts below is subject to decision passed by the Tahasildar in an application under Section 5 of Mamlatdars

Court Act, 1906.

4. It is, therefore, clarified that the petitioners will be entitled to apply for modification of impugned order under Order 39, Rule 4 of the Code of Civil Procedure, 1908 in case the Tahasildar under Section 5 of Malatdars Court Act, 1906 holds in existence of the suit way.

5. With this clarification, the writ petition stands disposed of.

**(AMIT BORKAR, J.)**