



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO. 5427 OF 2024**

DWARKABAI DHAMODHAR LOKHANDE AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS SUB
DIVISIONAL OFFICER AND OTHERS

...
Mr. Uttreshwar. M. Maske Patil, Advocate for the Petitioners.
Mr. N. D. Raje, AGP for Respondents-State
Mr. U. P. Giri, Advocate for Respondent No.3.

...
CORAM : S. G. CHAPALGAONKAR, J.
DATED : 09th JULY, 2024.

P.C.:-

1. Heard the learned Advocates appearing for the respective parties.
2. The petitioners impugn the order dated 27.04.2023 passed by Tahsildar-respondent no.2 as well as order dated 24.04.2024 passed by the Sub Divisional Officer, Bhokhardan-respondent no.1 in Revision Application No.98/2023.
3. The respondent no.3 filed applications dated 28.01.2022, 05.09.2022, 19.09.2022 and 27.09.2022 alleging that respondent no.3 has obstructed their customary way passing from Gut No.539 to reach village Warud. The contents of aforesaid applications clearly depicts that respondent no.3 asserts that since last five years the petitioners have raised construction of the cattle shed and blocked the road. In pursuance of the aforesaid applications, the panchanama dated 03.03.2023 was carried, which records that Bandh road from Gut No.539 and 535 can be seen, however, the petitioners have raised construction over that portion. The panchanama further records that unless measurement is carried, the definite conclusion as regards to location of road either from Gut No.539 or 535 cannot be drawn. After considering the material

on record, the learned Tahsildar allowed the application and directed the petitioners to remove obstruction from Gut No.539. In Revision Application the Sub Divisional Officer confirmed the said order.

4. Section 5 of the Mamlatdar's Courts Act empowers the Mamlatdar to exercise his jurisdiction to remove or cause to be removed any impediment or obstruction and also restore possession of any land or premise. However, Sub-clause (3) of Section 5 of the Mamlatdar's Courts Act stipulates limitation of six months for institution of such proceeding from the date of cause of action. In the present case, it is discernible from the applications tendered by the respondent that so called obstruction i.e. construction raised by the petitioners stand for years together. No specific cause of action is pleaded in the application. Even panchanama drawn by the Tahsildar do not record any obstruction created within the period of six months.

5. In that view of the matter, in absence of basic pleadings as regards to the cause of action and admitted fact regarding existence of construction for years together prior to filing of the proceeding, the Mamlatdar could not have assumed his jurisdiction in respect of the claim, which is beyond limitation. In that view of the matter, the impugned orders cannot be sustained in law. Hence, the following order:

ORDER

a. Writ Petition stands allowed in terms of prayer Clauses (B) and (C).

(S. G. CHAPALGAONKAR)
JUDGE