

VRJ

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

WRIT PETITION NO.7010 OF 2022

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Baban Trymbak Malode & Anr. ... Petitioners
V/s.
Gangubai Ramdas Malode & Ors. ... Respondents

Mr. Sachin Gite for the petitioners.

Mr. Shrishailya Deshmukh for respondent Nos.1 to 5.

Mr. Y. D. Patil, AGP for the State/respondent Nos.6 & 7.

CORAM : AMIT BORKAR, J.

DATED : JANUARY 15, 2024

P.C.:

1. The challenge in this writ petition is to the order passed by the authorities under the provisions of the Mamlatdars' Courts Act, 1906
2. The petitioners filed an application under section 5 of the Mamlatdars' Courts Act, 1906 bearing Vahiwat Case No.1 of 2019 before the Tehsildar, Nashik seeking direction to remove obstruction of the road.
3. Respondent Nos.1 to 5 filed their reply inter alia contending that they constructed a wall on the alleged way in the year 2011-2012. The petitioners were present at the time of construction of wall in the said year. Despite the said fact, the petitioners filed an

application on 1st February 2019, which is beyond period of six months as required under section 5 of the Mamlatdars' Courts Act, 1906.

4. On perusal of the orders passed by the Tehsildar and the Sub-Divisional Officer, it appears that both the authorities have specifically referred to the contention of respondent Nos.1 to 5 that the alleged construction of wall was of the year 2011-2012. The construction went on for period of 8 to 9 months. It is also referred that the petitioners were called by the respondents and were shown their boundary mark. The photograph dated 9th July 2012 was placed on record towards proof along with affidavit.

5. However, on perusal of the both orders, it appears that both the authorities have failed to refer to the material produced by the parties on the point of limitation. Therefore, it is necessary that the Tehsildar should re-consider the application under section 5 of the Mamlatdars' Courts Act, 1906 including issue of limitation.

6. Hence, the orders passed by the Tehsildar and the Sub-Divisional Officer are set aside.

7. The proceedings are remanded back to the Tehsildar, Nashik for decision afresh.

8. The writ petition stands disposed of. No costs.

9. All contentions raised by both parties are kept open.

(AMIT BORKAR, J.)