

VRJ

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

WRIT PETITION NO.9231 OF 2022

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VAIBHAV RAMESH
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Hiraman Dagaji Sonawane & Ors. ... Petitioners

V/s.

Balasaheb Jagannath Sonawane & Ors. ... Respondents

Mr. Rameshwar N. Gite for the petitioners.

Mr. Satyajeeet P. Dighe for respondent Nos.1 and 2.

Ms. V. S. Nimbalkar, AGP for the State.

CORAM : AMIT BORKAR, J.

DATED : JANUARY 17, 2024

P.C.:

1. Rule. Rule is made returnable forthwith.

2. The petitioners filed an application under section 5 of the Mamlatdars' Courts Act, 1906 for removal of impediment allegedly caused by respondent Nos.1 and 2. The Mamlatdar in exercise of power under section 5 of the Mamlatdars' Courts Act, 1906 allowed the application. Respondent Nos.1 and 2 filed a revision before the Sub-Divisional Officer. The Sub-Divisional Officer, based on material produced before him, set aside the order and directed the Tehsildar to reconsider the issue to ascertain following issues:

- (i) the road claimed by the petitioners is passing through Nala;

(ii) whether respondent Nos.1 and 2 caused obstruction to the road;

(iii) whether the application filed by the petitioners was within six months from the date of obstruction.

3. Learned advocate for the petitioners submitted that the petitioners are entitled to benefit of judgment passed by the Apex Court in the case of *Suo Motu Writ Petition (C) No.3 of 2020* which existence limitation of prescribed under all statute upto 2021.

4. According to learned advocate for the petitioners, there is no alternative road in existence. According to him, even if the alternative road is in existence, the same will not take away the Tehsildar's power to grant relief under section 5 of the Mamlatdars' Courts Act, 1906 if it is proved that the customary ways as required under section 5(2) of the Mamlatdars' Courts Act, 1906 is in existence.

5. The impugned order does not conclusively decide rights between the parties. The effect of the order is that the Tehsildar is directed to decide the application afresh. Therefore, it would be in the interest of justice that the Tehsildar shall decide the issues referred by the Sub-Divisional Officer along with contention raised by the petitioners referred herein before.

6. With the above said clarification, the writ petition stand disposed of. No costs.

7. Considering the facts of the case, the Tehsildar shall decide

the application within eight weeks from the date of appearance of the parties. The parties shall appear before the Tehsildar on 22nd January 2024 at 11:00 a.m.

8. Rule stands discharged in above terms.

(AMIT BORKAR, J.)