

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO. 10012 OF 2024

Sanjay Alias Ganesh Ramdas Gunjal Petitioner

Versus

Anandkumar Madhavrao Dhumne And Respondents
Ors.

NILAM
SANTOSH
KAMBLE

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Adv Sugandh Deshmukh a/w Irvin D'souza, Advocate for the
Petitioner.

Adv. Ajay A. Joshi, Advocate for Respondent No.1.

Adv. Y. D. Patil, AGP, for the State.

CORAM : R. M. JOSHI, J.

DATE : 12th SEPTEMBER, 2024.

P.C. :

1. Heard on the point of ad-interim relief.
2. Learned counsel for the Petitioner submits that the
contesting Respondents while making application under Section 5 of
the Mamalatdar's Court Act, 1906 (for short "the Act") has not
complied with mandatory requirements of Section 7 of the Act. It is
his further submissions that in the application filed by the

Respondents to Tahsildar dated 9th March, 2021 itself indicates that he had purchased the way from Survey No.57. As such, question of authority permitting way from Survey No.58 belonging to the Petitioner does not arise. He also drew attention of the Court to the report of Circle Officer which according to him indicates that there is way available from Survey No.64. He placed reliance on photographs to support the said submissions. On these submissions, stay to the impugned order is sought.

3. Learned counsel for the contesting Respondents opposes the said submissions by contending that at no point of time any issue was raised with regard to the maintainability of the proceedings before the Tahsildar for want of required contents as contemplated by Section 7 of the Act. It is also contended that the issue of limitations was also not raised before the said authority. He drew attention of the Court to the order impugned as well as the report of the Circle Officer which indicates that there is no other way available for the Respondents herein forthwith agriculture field.

4. Before considering *prima-facie* case sought to be made out by rival parties, it would be necessary to take note of powers of Tahsildar under Section 5 of the Act. This provision enables the

Tahsildar to remove obstruction/impediment in natural flow of water etc. Sub Section (2) empowers the said authority to issue injunction including direction to remove obstruction caused in the use of road/customary ways etc. Thus while granting stay to the impugned order, Court cannot ignore the said object of the Section 5(2) of the Act. Undoubtedly, Respondent has sought removal of obstruction caused in his approach to agricultural land. On the face of it, the order impugned as well as the inspection report indicates that except for the way as directed by the authority, there is no other way available for the contesting Respondents to pursue agriculture. *Prima-facie* there is no evidence to indicate existence of road from Survey No.64. As rightly pointed out on behalf of Respondent that no issue was raised by Petitioner in respect of technical defences including any defence of limitation before the Authority. Pertinently, no prejudice is shown to have been caused by Petitioner for want of proper form of Petition filed before Tahsildar. These issues raised by the Petitioner can be taken into consideration at the time of hearing of the petition on merit. Suffice it to say that owing to the aim and object of the provisions, and considering the material on record, it is not fit case for stay of the impugned order hence, ad-interim relief

stands refused.

5. Respondents to file reply before the next date of hearing.
6. Copy be made over to the Petitioner at least 48 hours in advance.
7. Stand over to 8th October, 2024.

(R. M. JOSHI, J.)