



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

943 WRIT PETITION NO. 2119 OF 2025

MADHAV DATTRAO TAYANATH

VERSUS

THE SUB DIVISIONAL OFFICE AND OTHERS

...

Advocate for the Petitioner : Mr.A.S.Kulkarni

AGP for Respondent-State : Mr.S.S.Dande

Advocate for Respondent nos. 3 and 4 : Mr.V.M.Muney

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CORAM : ARUN R. PEDNEKER, J.

DATE : 03.10.2025

P.C. :

1] Heard the learned counsel for the petitioners. By way of present writ petition, the petitioners are challenging the concurrent orders passed by the authorities i.e. order dated 15.12.2023 passed by the Tahsildar, Parbhani in File No.Outward-2023/Jamabandi-1/Rasta/Kavi and order dated 18.11.2024 passed by the Sub Divisional Officer, Parbhani in Case No.2024/ROR/A/167, granting right of way and directing the petitioners to remove the obstruction.

2] The learned counsel for the petitioners primarily submits that the cause of action is beyond 6 months as such application ought not to have been

entertained by the authorities below and the order passed is without jurisdiction.

3] It cannot be ascertained from the plaint that cause of action is before 6 months or within 6 months, so also, the Mamlatdar has also not followed the procedure under the provisions of the Mamlatdars Courts Act for completion of deficient pleadings and no objections was raised by the petitioner in this regard at any point of time. The orders passed by the Mamlatdars are never final and the same are subject to the orders of the Civil Court on the same subject matter.

4] Findings on facts are recorded by the authorities in a proceeding of summary nature and based on the spot inspection. Considering that the findings are summary in nature, this Court under Article 226/227 of the Constitution of India would not re-examine the same i.e. concurrent findings of facts of the authorities below and accordingly the writ petition is disposed of with observations made below.

5] Any interim or final order passed by the authorities constituted under Mamlatdars' Courts Act would be subject to interim or final orders passed by the civil court qua the same subject matter. The order passed by the civil court in a civil suit qua the same subject matter

would override the order passed by the authority under the Mamlatdars' Courts Act. Section 22 of the Mamlatdars' Courts Act in addition also provides that in the event any wrongful road has been granted to the applicant in a proceeding under Mamlatdars' Courts Act, the aggrieved side can claim mesne profits in civil suit for the time he has been kept out of possession of any property or out of enjoyment of any of any user. The petitioners are at liberty to approach the civil court to seek such remedy as may be available in law by filing appropriate proceedings.

6] The learned counsel for the petitioners submits that in the event the impugned orders are implemented before filing of the civil suit, the proceedings before the civil court would be seriously hampered. Considering this submission, authorities constituted under the Mamlatdars' Courts Act shall not implement the impugned orders, if already not implemented, for the period of four weeks from today so as to enable to the petitioners to approach the civil Court.

7] In the event, such civil proceeding is filed before the civil court qua the subject matter, the civil court would determine the same on it's own merits and without being influenced by the observations made by this Court or by the authorities constituted under the Mamlatdars' Courts Act.

8] With the above observations, the Writ Petition is disposed of.

[ARUN R. PEDNEKER]
JUDGE

DDC