



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

971 WRIT PETITION NO. 13139 OF 2022

VAIJNATH NAROBA SHELKE AND ANOTHER
VERSUS
RAMKISHAN MAROTI SHELKE AND OTHERS

...
Advocate for the Petitioners : Mr. Biradar Manoj G.
AGP for Respondent/State : Dr. Kalpalata Patil Bharaswadkar
Advocate for Respondent nos.1 to 7 : Mr. Jadhav Kailas B.

...
CORAM : ROHIT W. JOSHI, J.

DATED : 18th June, 2025

PER COURT :

1. The present petition takes exception to order dated 11.05.2022 passed by respondent no.9 under Section 5 of Mamlatdars' Courts Act, 1906, *inter alia*, directing the petitioners to remove obstruction on road passing through land bearing Gat No.73 as also the order dated 26.08.2022 passed by respondent no.10 dismissing revision filed by the petitioners against the said order.

2. Respondent Nos.1 to 7 had filed an application under Section 5 of the Mamlatdars' Courts Act before respondent no.9, *inter alia*, contending that the present petitioners and respondent no.8 had blocked cart-way passing through Gat Nos.71 and 72, and that respondent no.9 should order removal of the said obstruction. The said application came to be allowed by respondent no.9, vide order dated 11.05.2022, *inter alia*, directing that obstruction on the footway

passing through land bearing Gat No.73 should be removed. Aggrieved by the said decision, the petitioners preferred a revision before respondent no.10. Respondent No.10 has rejected the revision application confirming the order passed by respondent no.9.

3. The authorities have referred to a revenue records, which show existence of road and spot inspection report, which mentions that obstruction is created on the road.

4. Shri Manoj Biradar, learned advocate for the petitioners contends that the application ought to have been rejected since the date of alleged obstruction giving rise to cause of action is not mentioned in the application. He contends that there is no material to indicate that the application is filed within prescribed period of limitation of six months. He contends that the impugned order also do not record a finding that the obstruction to the alleged road is within period of six months. He, therefore, contends that the orders impugned are bad-in-law and are liable to be quashed.

5. Per-contra, Dr. Kalpalata Patil Bharaswadkar, learned Addl.G.P and Mr. Kailas Jadhav, learned advocate for respondent nos.1 to 7 support the orders. They contend that two authorities have concurrently held that the petitioners have created obstruction on the

road. They contend that existence of a road is established by entries in revenue records. According to them, the material on record is rightly appreciated by both the authorities in coming to a conclusion that the petitioners and respondent no.8 have created obstruction over an existing road, and therefore, the petition should be dismissed.

6. A perusal of application dated 04.06.2021 filed by respondent nos.1 to 7 will demonstrate that the date or the tentative period during which the road was blocked is not mentioned in the application. Apart from this, the application is signed by respondent no.1 (Ramkishan Shelke) alone.

7. The prescribed period of limitation under the Act is six months. If the cause of action arises prior to six months, the proceeding has to be rejected. In the case at hand, both the learned authorities have not recorded any finding as regards the point of limitation. Apart from this, the application also does not specify the date of cause of action. Having regard to the aforesaid, the orders impugned are liable to be quashed and are quashed accordingly. The matter is remanded to respondent no.9 - Mamlatdar for adjudication of the matter afresh. The learned Mamlatdar shall take appropriate steps for curing all the technical defects in the proceeding as contemplated under the Act and shall decide the matter afresh by recording specific finding on the point

of limitation apart from the merits.

8. However, since there is entry with respect to existence of footway, the disputed road will be permitted and allowed to be used as a footway till adjudication of the application by the Mamlatdar.

9. Parties to appear before the learned Mamlatdar on 1st July, 2025. Parties to note that separate notice for appearance will not be issued. Respondent No.9 - Mamlatdar is directed to decide the application on or before 31st December, 2025.

10. The petition is disposed of accordingly.

11. The civil application, if any, stands disposed of.

[ROHIT W. JOSHI]
JUDGE

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