



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 419 OF 2021

Shashikala Laxmanrao Sontakke and ors **Vs.** Sub-Divisional Officer cum Deputy
Collector and ors.

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. M. P Kariya, Advocate for Petitioners.
Mr. S. B. Bissa, AGP for Respondent No. 1 and 2.
Mr. M. V. Rai, Advocate for Respondent No. 3 and 4.

CORAM : ROHIT W. JOSHI, J.

DATE : 12.09.2025.

The present petition takes exception to order dated 01.04.2020 passed by the Nayab Tahsildar, Anjangaon, acting as Mamlatdar under the provisions of Mamlatdar's Courts Act, 1906, in Revenue Case No. MCA-05/Kalgavan/01/2018-19 and the order dated 01.12.2020 passed by the learned Sub-Divisional Officer, Dariyapur, rejecting revision preferred by the petitioner challenging the said order, being Revenue Case No. MCA-5/Kalgavan/50/2019-20.

2. The respondent Nos. 3 and 4 had filed two separate applications under Section 5 of the Mamlatdar's Courts Act, seeking orders for removal of obstruction on road allegedly passing over the field boundary i.e. Dhura of land bearing Gat No. 247. Respondent No. 3 had initially filed application dated 15.10.2015, in which he had claimed that the petitioners had blocked the suit road. Thereafter, he filed a fresh application/suit on

27.09.2016, claiming that the petitioner had blocked the road passing through the field boundary of Gat No. 247. He has stated in the plaint that the road was blocked in the first week of February, 2016.

3. It will be pertinent to mention that respondent no. 4 had also filed an application/suit against the petitioners, alleging that they had blocked the said suit road and prayed for injunction for removal of the said obstruction. In this application, it is stated that the road was blocked in last week of June, 2016.

4. The application filed by the respondent no. 3 was decided by the learned Mamlatdar vide order dated 27.03.2017. The learned Mamlatdar had granted road to the respondent no. 3 through the field boundary i.e. *Dhura* passing between lands bearing Gat Nos. 250, 251, 252 and 253. Respondent no. 3 challenged this order by filing revision under Section 23 of the Act before the Sub-divisional Officer. The Sub-divisional officer remanded the matter back to the Mamlatdar vide order dated 24.11.2017.

5. After remand of the matter, suit filed by the respondent Nos. 3 and 4 were taken up for adjudication together. The said suits have been decided by the learned Mamlatdar vide judgment and order dated 01.04.2020.

6. The Mamlatdar has directed the removal of obstruction of road passing through Gat Nos. 212, 246 and 243 in order to provide access to the fields of

respondent nos. 3 and 4. The petitioners challenged the said order by filing a revision before the Sub-divisional Officer, which came to be rejected vide order dated 01.12.2020. Then present petition is filed against the said concurrent orders.

7. Perusal of the order dated 01.04.2020, passed by the Mamlatdar will demonstrate that the point of limitation, though raised by the petitioners, is not considered by the learned Mamlatdar. The learned Mamlatdar has stated that, earlier, vide order dated 15.03.1997, obstruction over the road passing through Gat Nos. 212, 246 and 243 was ordered to be removed for granting access to the owner of land bearing Gat No. 240.

8. Section 5(3) of the Act provides a limitation of six months for filing a suit under the Act. The suit is required to be filed within a period of six months from the date on which cause of action arises.

9. Perusal of Section 5(4) of the Act will demonstrate that the cause of action arises when the obstruction is first created. Although in the suit filed by the respondent no. 4 it is stated that the obstruction was created in last week of June, 2016, in the suit filed by the respondent no. 3 it is stated that the obstruction was created in the first week of February, 2016. Likewise, in the first suit/application which is filed on 15.10.2015

there is also an allegation of obstruction of the same road.

10. In view of the above, it was necessary for the Mamlatdar to record a positive finding as regards the date on which the obstruction was first created. The learned Advocate for respondent Nos. 3 and 4 states that the obstruction caused was removed and thereafter again in the last week of June, 2016 obstruction was created. However, such is not the finding recorded by the learned Mamlatdar.

11. As regards, the Sub-divisional Officer, perusal of the order will demonstrate that the said order is a non speaking order, it does not deal with any of the contentions raised by rival parties. The order is completely unsustainable.

12. In view of the above, the proceedings will have to be remanded before the learned Mamlatdar to decide the suits afresh. The learned Mamlatdar is directed to record a positive finding on the aspect of limitation while deciding the matter afresh.

13. The petition is partly allowed. The order dated 01.04.2020, passed by the Mamlatdar in Revenue Case No. MCA-05/Kalgavan/01/2018-19 and order dated 01.12.2020 passed by the learned Sub-Divisional Officer, Dariyapur, in Revenue Case No. MCA-5/Kalgavan/50 /2019-20 are quashed and set aside.

14. The matter is remitted to the file of the learned Mamlatdar, Anjangao for deciding the suits afresh.

15. The parties shall appear before the learned Mamlatdar on 01.10.2025. The parties to note that separate notice for appearances will not be issued.

16. The Mamlatdar is directed to decide the suits as expeditiously as possible and in any case, on or before 30.11.2025.

17. Interim order passed in the present petition shall continue till disposal of the proceedings before the learned Mamlatdar.

18. It is clarified that it will be open for the parties to seek execution of earlier order dated 15.03.1997 as per Section 21 of the Mamlatdar's Courts Act, 1906. If such application for execution of the order is filed, the same be decided on its own merits in accordance with law.

19. It is, however, clarified that this Court has not expressed any opinion, as regards, maintainability of the said execution petition which may be filed in order to execute the earlier order dated 15.03.1997.

(ROHIT W. JOSHI, J.)