



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10604 OF 2025

Ravindra Ganpati Patil.

...Petitioner.

Versus

Santosh Bhagoji Patil and Others.

...Respondents.

*Mr. Chetan Patil, Prathamesh Magdum i/b Mr. Mandar Bagkar for the Petitioner.
Mr. Kuldeep Nikam for the Respondent No. 1 to 9 and 13.
Mr. S. D. Rayrikar, AGP for the Respondent No. 17 and 18.*

Coram : Smt. Vibha Kankanwadi, J.

Date : June 11, 2026.

ORDER:

1. The present petition has been filed challenging the order passed by Respondent No.18 on 28th March 2025 in Revision Application No.6 of 2024 arising out of order dated 4th July 2024 passed by the Respondent No.17 under Section 5(2) of the Mamlatdar's Courts Act, 1906 [for short "***the said Act***"].

2. The Petitioner has come with the case that an application which was purportedly made by the residents of village Rashiwade Khurd, Taluka Radhanagari, District Kolhapur contending that south-north road admeasuring 3 to 5 meters is in existence since last 70 to 80 years and it passed through lands Survey Nos.14, 15, 16, 17, 18, 19, 20 and 21. It was then contended that the occupants of land Survey Nos.15 and 19 by



taking disadvantage of their names in 7/12 extract have carried out illegal construction and obstructed the use of road. By an application under Section 5 of the said Act, they prayed that the obstruction be removed and road be allowed to be used. The Petitioner was party Respondent therein and he has filed a detailed say before the Circle Officer on 20th July 2023. It was specifically contended that there is no public road as contended in the application. However, Respondent No.17 without properly carrying out the panchnama or spot inspection, allowed the application. The Petitioner was directed to give 15 feet wide road. The Petitioner challenged the said order before Respondent No.18 in revision. Respondent No.18, though legal points were raised, dismissed the revision. Hence, the present writ petition.

3. Heard learned advocate Mr. Chetan Patil for the Petitioner, learned advocate Mr. Kuldeep Nikam for Respondent Nos.1 to 9 and 13 and learned AGP Mr. Rayrikar appearing for Respondent Nos. 17 and 18.

4. Learned advocate appearing for the Petitioner vehemently submitted that Respondent No.17 and Respondent No.18 failed to consider that the application that was filed was not in proper format as contemplated under Section 7 of the said Act; it was not presented by filing a plaint before the Mamlatdar's Court by making necessary mandatory compliance; though Section 8 of the said Act prescribes that where the petition is not in the form of a plaint, then, the Mamlatdar



should explain to the person presenting the petition, the nature of reliefs afforded by the said Act and shall inquire whether the Plaintiff desires to obtain reliefs; No such endorsement has been appearing on the application as well as per Section 9 of the said Act, there was no examination of Plaintiff on oath. As per Section 10 of the said Act, the plaint has to be in the prescribed form and should be verified and the endorsement should be as per Section 11 of the said Act. Section 12 of the said Act makes it very clear that the Mamlatdar should reject the plaint when it is not shown that the cause of action is within the six months period before the plaint. Perusal of the application filed before the Mamlatdar in the present case, there is absolutely no mention as to when the obstruction was caused by the Petitioner. When these *lacunae* were found, then the revision ought to have been allowed.

5. There is affidavit-in-reply by Ms. Anita Deshmukh, Tahsildar, Radhanagari on behalf of Respondent Nos.17 and 18. Except denial there is nothing and it has not been pointed out as to how the application is complying with the provisions of Sections 6 to 12 of the said Act.

6. Learned Advocate for the Petitioner has taken me through the documents on record and re-iterated the grounds.

7. Learned advocate for the Respondent Nos.1 to 6 then submitted that though there appears to be some technical defects, the Respondent Nos.1 to 6 be allowed to file fresh application before the concerned



Court, thereby they have accepted in a way that there were legal flaws in the application. Perusal of the copy of application which is the photocopy of certified copy of application discloses that it was a simple application in the name of Tahsildar not signed by anybody. Only at the end, "Gramstha" (Villagers) is written. It is not even stated by the affiant Miss Anita Deshmukh that when such informal petition was filed, the Mamlatdar had then taken up the procedure under Section 8 of the said Act. Section 8 of the said Act prescribes that where the petition not in the form of a plaint is presented to the Mamlatdar and subject matter falls within the scope of Section 5 of the said Act, the Mamlatdar shall explain to the person presenting the petition, the nature of reliefs afforded by this Act and shall inquire whether such person desires to obtain the reliefs thereby. If the plaintiff was to obtain relief, the Mamlatdar shall endorse the desire on the petition which shall be deemed to be have been presented under Section 7 of the said Act.

8. Here, simultaneously we have to consider Section 10 of the said Act which prescribes that if necessary when the plaint is presented, and has, if necessary been treated in the manner specified in Section 9, the Mamlatdar shall require the Plaintiff to subscribe and verify the plaint in his presence. The endorsement on the plaint by Mamlatdar that the plaint is duly subscribed and verified is mandatory in view of Section 11 of the said Act. None of these mandatory provisions have been followed.



9. In *Gaurakshan Sansthan v. State of Maharashtra [2019(6) Mh.L.J.*

473] it has been held by this Court that commencement of proceedings under Section 7 of the said Act can be by filing plaint before the Court, compliance of procedure is mandatory. Section 9 of the said Act makes it mandatory that the examination of Plaintiff should be on oath. Now, when these defects were there, Respondent Nos.17 and 18 could not have relied on the application. Respondent No.18 should not have proceeded under Section 5(2) of the said Act. Question of executing the panchnama that too by a different person and not by a tahsildar himself is not at all contemplated. Here, in this case the said panchnama has been got done from the circle officer. All these points were raised in the revision, however, the Respondent No. 18 has not paid any attention.

10. Another most important fact is that the said application which has been treated as plaint under Section 5(2) of the Mamlatdar's Courts Act does not specify the date on which the obstruction was caused or made by the Petitioner. Here, it is to be noted from Section 12(c) of the said Act that where it appears on the face of plaint that the cause of action arose more than six months before the plaint was presented, then the Mamlatdar shall reject the plaint. Thus, it is to be noted that the date of cause of action should be pleaded in such application. In the absence of the same, application ought to have been rejected.

11. Now, Respondent Nos.1 to 6 have prayed for relegating the matter



or to give liberty to them to file an application afresh. However, such material defect cannot be allowed to be cured by granting such liberty. Now, the imaginary date of obstruction would appear which would be prejudicial to the Petitioner. Therefore, the petition should be allowed. Accordingly, it is allowed. The order dated 28th March 2025 passed by the Respondent No.18 in Revision No. 6 of 2024 arising out of order dated 4th July 2024 passed by the Respondent No. 17 under Section 5(2) of the said Act stands quashed and set aside. No order as to costs.

[Smt. Vibha Kankanwadi, J.]