

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

**WRIT PETITION NO. 1507/2019**

Anil S/o Pandurang Gathe & anr.

..VS..

Anil S/o Ramchandra Bute & anr.

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Office Notes, Office Memoranda of Coram,  
appearances, Court's orders of directions  
and Registrar's orders  
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Court's or Judge's orders

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Shri M.K. Mishra, Advocate for the petitioner(s)  
Shri R.D. Dharmadhikari, Advocate for the respondents  
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**CORAM : Z.A.HAQ, J.**

**DATED : 28/02/2019**

Heard.

The petitioners had approached the Mamlatdar under Section 5 of the Mamlatdars' Courts Act, 1906 complaining that the respondents had obstructed the access way to their field. By the order dated 28/11/2017, the Mamlatdar allowed the application filed by the petitioners and directed the respondents to remove the obstruction from the access way to enable the petitioners to approach their field. This order was challenged by the respondents before the Sub-Divisional Officer in revision which was dismissed on 14/06/2018. The respondents have challenged the orders passed by the Mamlatdar and SDO before this Court in W.P. No. 6537/2018 which is pending. On 05/10/2018, an order is passed by this Court which is as follows:-

“Heard.

*Issue notice for final disposal to the respondents,  
returnable on 12<sup>th</sup> October, 2018.*

*Learned Assistant Government Pleader Shri B.P. Maldure appears and waives service for respondent Nos. 1 to 4. Learned counsel Ms. Singita Mishra appears and waives service for respondent Nos. 5 and 6.*

*In the meanwhile, parties are directed to maintain status quo as regards the possession over the subject property until further orders.”*

Then by the order dated 12/10/2018, this Court adjourned the hearing of the petition with directions that the petition should be listed after the reference made to the larger Bench is decided. After this Court directed the parties to maintain status quo as regards possession over the suit property, the petitioners have filed the civil suit praying that they have right to approach their field over Dhura of Survey No. 171 and Survey No. 172. The petitioners have also prayed for decree for injunction restraining the respondents from obstructing the petitioners from using the access way. This civil suit is filed on 23/10/2018. In this civil suit, the petitioners had filed an application (Exh. 5) under Order 39 Rules 1 and 2 of the Code of Civil Procedure praying for temporary injunction restraining the respondents from obstructing the access way over Dhura Field Survey No. 171 and Field Survey No. 172. On this application, the learned trial Judge has passed the impugned order. The learned trial Judge has observed that as this Court has directed the parties to maintain status quo, it would not be proper for him to consider the application (Exh. 5) filed by the petitioners praying for temporary injunction.

After examining the facts of the case, I am of the view that the learned trial Judge has rightly adopted the hands off policy in view of the pendency of the writ petition before this Court and the order passed by this Court on

05/10/2018 directing the parties to maintain status quo as regards possession over the suit property. It cannot be said that the learned trial Judge has failed to exercise the jurisdiction vested in him or has committed any illegality.

I see no reason to interfere with the impugned order.

The writ petition is **dismissed** with costs quantified at Rs. 5,000/- (Rs. Five Thousand) to be paid by the petitioners to the respondents.

The receipt showing payment of amount of costs shall be produced on record of this petition within one month.

The petitioners will be at liberty to file appropriate application in W.P. No. 6537/2018 for appropriate orders, if so advised.

**JUDGE**

*Ansari*