

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.2594 OF 2017

Shri Sopan Mhatarba Sanap & Ors.

..Petitioners

Vs.

Shri Sukhdev Rama Varhe & Ors.

..Respondents

Mr. G. K. Gole for the Petitioners.

CORAM : R. M. SAVANT, J.

DATE : 7th MARCH, 2017

P.C.

. The writ jurisdiction of this Court is invoked against the order dated 26/7/2016 passed by the Sub-divisional Officer, Yeola. By the said order the Revision Applications filed by the Petitioners bearing Nos.25/2016 and 27/2016 came to be rejected, thereby the order dated 31/10/2015 came to be confirmed.

2. The Petitioners herein had filed an Application under section 5 of Mamledar Courts Act, 1906 claiming that the Respondents have caused an obstruction on the road which was to the east of Survey No.1861, Survey No.1865 and Survey No.1866. The said obstruction was causing inconvenience to the Petitioners from accessing their land bearing Survey No.1857 to 1866, which is to the south of Survey No.1857. The Petitioners were also claiming the existence of east-west road to the south of Survey No.1868 and between Survey Nos 1868 and Survey No.1869 which belongs to the Respondents.

3. Whist dealing with the Application under section 5 of the said Act,

the Tahsildar directed spot inspection to be carried out of the site in question. Spot inspection was accordingly carried out and it was reported that there is an obstruction caused on the road on the east of the Survey No.1864, Survey No.1865 and Survey No. 1868 by the Respondents. Insofar as the road going east to west to the south of Survey No.1868 is concerned, it was reported that no such road was in existence between the said Survey No.1868 and Survey No.1869. The Tahsildar thereafter took up the Application under section 5 filed by the Petitioner for consideration. Having regard to the fact that there was an obstruction caused on the road on the east of the Survey No.1865, Survey No.1866 and Survey No.1868 the Tahsildar partly allowed the Application and directed the removal of the said obstruction. However, the Tahsildar on the basis of the report found that there was no road in existence to the south of Survey No.1868 and Survey No.1869, rejected the said claim of the Petitioners.

4. The Petitioners aggrieved by the order passed by Sub-divisional Officer dated 26/7/2016 challenged the same by way of two Revision Applications i.e. 25/2016 and 27/2016. The Sub-divisional Officer having regard to the material on record did not deem it appropriate to interfere with the order passed by the Tahsildar and, accordingly, rejected the Revision Applications.

5. The Petitioners aggrieved by the order passed by the Sub-Divisional Officer dated 26/7/2016 have filed the instant writ petition

challenging the said order to the extent it denies them the road going east to west to the south of Survey No.1868.

6. The learned counsel appearing for the Petitioners would contend that there is in existence a murum road to the south of Survey No.1868 and in support of the said contention relies upon a statement of the village road which shows that there is a murum road against the said Survey No.1868. In my view it is not possible to accept the said contention especially having regard to the spot inspection which shows that no such road was seen in existence going east to west to the south of Survey No.1868. Merely, because there is mention of a murum road in the document concerning the village roads, would not mean that a murum road is in existence. The Applicant under section 5 of the said Act has to demonstrate the existence of the road and also that the said road is in use since long past. This has not been done in the instant case.

7. Hence, the orders passed by the Tahsildar as well as the Sub-Divisional Officer do not warrant interference at the hands of this Court in its writ jurisdiction.

8. The Writ Petition is accordingly, dismissed.

[R.M.SAVANT, J]