

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

WRIT PETITION STAMP NO.33375 OF 2016

Krishna Dharma Mhatre and ors. : Petitioners.

versus

Sub Divisional Officer and ors. : Respondents.

Mr. B S Mahajani for the Petitioners.

Mrs. M S Bane "B" Panel Counsel for the Respondent Nos.1 and 2.

CORAM : R. M. SAVANT, J.

DATE : 07th February 2017

P.C.

1 The writ jurisdiction of this Court is invoked against the order dated 02/06/2016 passed by the Sub Divisional Officer, Alibag Division, Alibag, by which order the Revision Application filed by the Petitioners came to be dismissed and resultantly the order dated 27/10/2015 passed by the Tahsildar came to be confirmed.

2 The impugned order as well as the order dated 27/10/2015 passed by the Tahsildar have been passed under Section 5 of the Mamaltdar's Court Act, 1908 (for short "the said Act"). The Respondent No.5 ;herein was the Applicant who had made an application before the Tahsildar, Alibag under Section 5 of the said Act alleging that the Petitioners herein have caused obstruction on his right of way going through their land i.e. Survey No.214/1/2 to approach his land being Survey No.215. In support of the said application, the Respondent No.5 had relied upon various documents including

7x12 extract of the said land being Survey No.214/1/2 as also the reports which were submitted by the Revenue Authorities. As is the procedure applicable whilst adjudicating an application under Section 5 of the said Act, the Tahsildar had directed a report to be submitted as regards the actual situation at site. Accordingly the Tahsildar had conducted a site inspection on 28/08/2015 in which report it has been mentioned that except the disputed road, there is no road to approach the land of the Applicant being Survey No.215. In so far as the said report i.e. the map is concerned, the same has been signed by the Tahsildar as also the respective parties i.e. the Petitioners and the Respondent No.5. The Tahsildar on the basis of the said material on record as also having regard to the fact that the road going through the land of the Petitioners in Survey No.214/1/2 has been concretized pursuant to the funds made available under the 12th Finance Commission deemed it appropriate to allow the application filed by the Respondent No.5 and directed the Petitioners herein not to obstruct the Respondent No.5 from using the road in question.

3 The said order passed by the Tahsildar dated 27/10/2015 was taken exception to by the Petitioners by filing a Revision under Section 23 of the said Act before the Sub Divisional Officer. The Sub Divisional Officer by the impugned order dated 02/06/2016 has dismissed the Revision filed by the Petitioners and thereby confirmed the order dated 27/10/2015 passed by the

Tahsildar. It seems that before the Sub Divisional Officer the Petitioners sought to raise a contention that proper opportunity was not given to the Petitioners and that they were not permitted to place relevant material on record. The Sub Divisional Officer as can be seen from the impugned order has also adverted to the fact that the disputed road has been concretized pursuant to the funds made available under the 12th Finance Commission. The Sub Divisional Officer has also adverted to the 7x12 extract of the land of the Petitioners wherein an area of 5.1 Ares is shown for the road. The Sub Divisional Officer has also adverted to the material which was placed on record before the Tahsildar in the last paragraph of the impugned order which material included the photographs of the site in question. Having regard to the said material on record, the Sub Divisional Officer observed that the contention of the Petitioners that proper opportunity was not given could not be accepted.

4 In the light of the material which is on record and which has been adverted to in the earlier part of this Order, the concurrent orders passed by the authorities below i.e. the Tahsildar and the Sub Divisional Officer cannot be taken exception to. The orders do not suffer from any error of jurisdiction or any illegality or infirmity for this Court to exercise its writ jurisdiction. The above Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]