

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 9609 OF 2018

**KALAVATI SITARAM FATING AND OTHERS
VERSUS
INDUMATI SUBHASH ZAREKAR AND OTHERS**

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Advocate for the Petitioners : Shri V. B. Kulkarni
AGP for Respondent Nos. 3 to 6 : Shri S. R. Yadav-Lonikar

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 19th SEPTEMBER, 2018.

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PER COURT :

1. The petitioners seek to challenge the order passed by the Mamlatdar under Section 5(2) of the Mamlatdars' Courts Act, 1906, dated 21/02/2018 and the order dated 09/07/2018 passed by the revisional authority under Section 23(2) of the said Act.

2. The contention of the petitioners is that the village map indicates that there is no road as has been concluded by the Mamlatdar as well as by the revisional authority. It is further contended that when the panchanama was carried out pursuant to the spot inspection of the disputed road, petitioner

No.1, who is the owner of the land was never noticed and she was not present. It is denied that any obstruction has been created by these petitioners by placing dry wood logs and thorny sticks on the path.

3. The learned AGP points out that petitioner No. 2 Deorao, who is the son of petitioner No.1, was present at the time of the spot inspection and in his presence the panchanama was drawn on 15/02/2018. He was, therefore, appearing as a representative of his mother as well as his another brother Rajaram.

4. I find that the Mamlatdar has considered the spot inspection and the panchanama. So also, the Additional Collector has considered these documents and the report of the panchas which indicates that the '*Wahiwat*' road, which was in existence from 1994, was superficially blocked by petitioner Nos. 2 and 3.

5. Considering the scheme of the Mamlatdars' Courts Act, 1906, if any obstruction or obstacle is created in an existing

path, the same can be ordered to be removed. The case is not as regards creation of a new road.

6. Though the petitioners contend that few affidavits were filed by some villagers, who are the original owners, stating that no such road was in existence, the record reveals on the basis of the spot inspection and the panchanama that such a road was found at the spot and was superficially obstructed by these petitioners.

7. Considering the above, I do not find that the concurrent findings of the authorities below could be termed as being perverse or erroneous. This petition being devoid of merit is, therefore, dismissed.

(RAVINDRA V. GHUGE, J.)

shp/-