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

WRIT PETITION NO.1541 OF 2018

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Popat Vitthal Nikam and Ors.

..Petitioners

Versus

Govt. of Maharashtra,
Through Collector, Nashik and Ors.

..Respondents

Mr. Tushar N. Sonawane, for the Petitioners.

Mr. S. D. Rayrikar, AGP for the Respondent Nos.1 to 3.

None for the Respondent No.11.

CORAM : NITIN W. SAMBRE, J.

DATE : 8th APRIL, 2022

PC.

1. This petition is by the plaintiffs to RCS No.60 of 2015, which is for simplicitor injunction. The petitioners suffered two orders viz. dated 28th December, 2005 passed under Section 5 by the Mamladtar under the Mamlatdars' Courts Act, which was confirmed in revision before the Sub Divisional Officer on 5th January, 2015.

2. Both these orders passed by the authorities under the Mamlatdars' Courts Act are questioned in the aforesaid suit, as is claimed by the counsel for the petitioners. According to him, findings in both these orders are contrary to the record. He has invited attention of this Court to the findings recorded by the Trial Court, thereby rejecting prayer for grant of temporary injunction which is confirmed by the learned District Judge on 23rd November, 2017.

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3. With the assistance of counsel for the petitioners and learned Assistant Government Pleader, I have perused the suit claim. It is claimed by the petitioners that there exist a stream flowing from the field of the petitioners through which way to be used by the respondents/defendants can't be inferred. So as to substantiate the said claim, he has sought to rely on the pleadings and the other material on record.

4. I have appreciated the said submissions.

5. What can be noticed from the order of the Sub Divisional Officer and also the Tahsildar, which were passed respectively on 5th January, 2015 and 28th December, 2005, there appears to be a Panchnama drawn by the Tahsildar/Mamlatdar about existence of road.

6. The Sub Divisional Officer while exercising his revisional jurisdiction in detail considered the claim of the petitioners and also the record of the Zilla Parishad and other authorities so as to form an opinion that there exist a right of way. All this material prevailed before Courts below in passing the impugned orders.

7. There appears to be concurrent findings recorded by both the Courts below based on the aforesaid. That being so, in my opinion, no case for interference in the order impugned is made out.

8. The petition as such fails, dismissed.

[NITIN W. SAMBRE, J.]