

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

43 WRIT PETITION NO.4125 OF 2018

**DNYANOBA VISHWANATH KOLHE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

Mr.S.B. Gastgar, Advocate for the petitioners.
Mr.K.N. Lokhande, AGP for the respondent/State.
Mr.A.N. Nagargoje, Advocate for respondent Nos. 5 to 7.

CORAM : KISHORE C. SANT, J.
DATED : 05.06.2023

PC :-

01. This petition is by the original applicants, who had filed application under section 5 of the Mamlatdars Courts Act seeking right of way. The learned Tahsildar on visiting the spot drawn panchanama and recorded that the alleged road is blocked by raising wire fencing in 2010-11 itself, when the application was filed in the year 2017 i.e. after 5-6 years. It is also specifically recorded in the panchanama that the fencing is raised approx. 25 years prior to the date of panchanama. On the basis of that a specific finding is recorded that no road is found to be in use as claimed by the petitioner. The application under section 5 therefore came to be rejected by the Tahsildar.

02. The learned SDO in appeal also specifically recorded that the petitioners could not establish right of way or that the road was in use to go to the land Survey No.150, 154, 153 and 152 of village Kambalga through land Survey Nos. 150 and 161 belonging to the respondents.

03. This Court finds that both the authorities have concurrently held that there is no way in existence as alleged by the petitioners.

04. The learned Advocate for the petitioners vehemently argued that the findings of both the authorities are against the record. Out of three panchanamas, it is only one panchanama, in which it has come that the road is blocked since last 25 years and finding based upon that is perverse.

05. The learned Advocate for respondent Nos.5 to 7 submits that for entertaining the application under section 5 of the Mamlatdars Courts Act, it is necessary for the applicants to show that their right of way is obstructed within six months of filing of such application or petition. Both the authorities have clearly come to a conclusion that the alleged obstruction is more than 25 years old and there is no reason to call for interference. Both the authorities

have therefore rightly rejected the case of the petitioner.

06. The learned AGP on the basis of affidavit filed by Nayab Tahsildar submits that both the authorities have rightly passed the order. From the affidavit he points out that the Circle Inspector had conducted spot inspection and had prepared panchanama. He has also annexed copies of panchanama to his reply.

07. Considering the above facts, this Court finds that when both the authorities have held against the petitioners on facts, there is no reason to cause interference for such finding of fact, while exercising jurisdiction under Article 227 of the Constitution. This Court finds that both the authorities have held that the petitioners have not proved their right of way. There is specific finding recorded by the Tahsildar in para 6 clause (5) that the petitioner is using another alternative way to go to his land. Considering the above, this Court finds that there is no merit in the petition. The petition, therefore, stands dismissed.

08. At this stage, the learned Advocate for the petitioners submits

that liberty be given to the petitioners to take recourse of other provisions. Needless to say that the petitioners shall be entitled to any other recourse as provided under law.

[KISHORE C. SANT, J.]