



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

81 WRIT PETITION NO.9840 OF 2021

KIRAN MANIKRAO KOLHE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...

Advocate for the petitioners : Mr.B.A.Shinde
AGP for Respondent-State : Mr.R.S.Wani
Advocate for Respondent nos.4 to 10, 13 to 16 :
Mr.S.S.Tope

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CORAM : ARUN R. PEDNEKER, J.

DATE : 28.11.2023

P.C. :

1] Heard the learned counsel for the respective parties.

2] The application filed by the respondent nos. 4 to 16 before the respondent no. 3 did not indicate that the application is filed under Section 5 of the Mamlatdar's Courts Act. However, the order is passed by the Tahsildar under Section 5 of the Mamlatdar's Courts Act granting road to the respondents from the land of the petitioner from Gat Nos.268, 269, 270, 271 and 272 of village Umra,

Taluka Pathri, District Parbhani. Thereafter, the petitioners filed revision before respondent no.2, challenging the order of the Mamlatdar before Sub Divisional Officer under Section 23 (2) of the Mamlatdar's Courts Act and the order passed by the Mamlatdar Court was maintained by the Sub Divisional Officer. Against the said order, the present Writ Petition is filed.

3] The learned counsel for the petitioners submits that the application filed under Section 5 of the Mamlatdar's Courts Act is allowed by respondent no.3 and granting way to the respondent nos.4 to 16 to approach their land from the common bandh of Gat Nos.267 and 282. While allowing the said application, there is no specific finding that the road is in existence from Gat Nos.267 and 282. However, there is finding that there is alternate road from Gat Nos. 303 and 304.

4] *Per contra*, the learned counsel for the respondent nos. 4 to 10, 13 to 16 submits that it is not mentioned in the application that the said application is

filed under Section 5 of the Limitation Act and apparently prayer was made under the Maharashtra Land Revenue Code and the Tahsildar has power under the Maharashtra Land Revenue Code to grant road from Gat Nos.268, 269, 270, 271 and 272.

5] Having heard the learned counsel for the parties, it reveals from the record that the authority has exercised the powers under the Mamlatdar's Courts Act which are apparently beyond the period of limitation for 6 months of the cause of action. The application itself indicates that the application is filed after a period of 2 years. Without rendering any finding on limitation, so also, looking to the fact that the road which is granted, is based on the report of the Block Development Officer which indicated that there are grown trees on the road.

6] Since the road has been granted without any finding by the authorities as to the existing road from Gat Nos.267 and 282. The powers to grant of road ought not to have been exercised by the authorities under Section 5 of the Mamlatdar's Courts Act.

7] However, the Tahsildar has independent power under the Maharashtra Land Revenue Code to grant road within the parameter laid down in the Maharashtra Land Revenue Code. The Tahsildar to entertain such application if a fresh application is filed under the Maharashtra Land Revenue Code.

8] In view of the same, the impugned order dated 07.06.2021 passed by respondent no.2 and the order dated 22.03.2021 passed by the respondent no.3 in Case No.2021/ROR/Kavi are quashed and set aside. The present Writ Petition is disposed of with liberty to the respondents to file an application under the Maharashtra Land Revenue Code. If such application is filed by the respondents, the authority concerned to decide the same in accordance with law preferably within a period of 3 months from the date of filing of the application.

9] Writ petition is disposed off.

[ARUN R. PEDNEKER]
JUDGE