

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

WRIT PETITION NO. 6458 OF 2022

Ramdas Mahadeo Dhakane And Anr. ...Petitioners
Versus
Satish Pandurang Dhakane And Ors. ...Respondents

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Mr. Abhijit Kulkarni i/by D.D. & Abhijit Associates, for Petitioners.
None for Respondents.

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CORAM : SANDEEP V. MARNE, J.
DATE : 06 NOVEMBER, 2023

P.C.:

1. By this Petition, the Petitioners challenge order dated 26 April 2019 passed by Tahsildar under provisions of Section 5 of the Mamlatdar Courts Act, 1906 directing the Petitioners to remove the obstruction from the road leading to the land of the Respondents. Petitioners also challenge order dated 1 July 2019 passed by the Sub-Divisional Officer rejecting the Revision filed under provision of Section 23(2) of the Mamlatdar Courts Act.

2. Mr. Kulkarni, the learned counsel appearing for the Petitioners would submit that the Respondents are attempting to claim easementary rights by filing proceedings under Section 5 of the Mamlatdar Courts Act, when in fact only a Civil Court has jurisdiction to adjudicate upon the easementary

rights between the parties. He would further submit that the Tahsildar as well as Sub-Divisional Officer have failed to take into consideration that the Consolidation Scheme finalized in the Village, which does not show existence of any road in the land of the Petitioner leading to the land of the Respondents. He would submit that if there was indeed any road as alleged by the Respondents, the same ought to have been reflected in the consolidation scheme. He would further submit that a non-existent road cannot be created by way of order passed by the Mamlatdar under the provisions of Mamlatdar Courts Act and it was necessary for the Respondents to obtain a decree of the Civil Court for the purpose of establishing their easementary rights.

3. I have considered the submissions canvassed by Mr. Kulkarni. So far the issue of non reflection of the road in the Consolidation Scheme finalized in the village is concerned, the said point was not taken by the Petitioners in the Revision filed before the Sub-Divisional Officer. Therefore, this point cannot be raised directly before this Court in a Writ Petition filed under Article 227 of the Constitution of India. Even otherwise, I fail to understand as to how finalization of Consolidation Scheme has any relation with regard to existence of road or creation of obstruction. The Mamlatdar exercises a limited jurisdiction under Section 5 of the Act, where he has to

record a satisfaction of the existence of a road and whether any obstruction is caused to the same. In the present case, a Panchanama has been prepared in presence of the Petitioners. The Panchanama shows existence of the road in the land of the Petitioners leading to the land of the Respondents. The Panchanama also demonstrates creation of obstruction by the Petitioners on such road. The Mamlatdar has accordingly exercised the jurisdiction directing removal of obstruction from that road. The Mamlatdar has also recorded a finding of fact that there is no other alternate road in existence for approaching the land of the Respondent. These findings of fact recorded by Tahsildar have been upheld by the Sub-Divisional Officer by passing the order under Section 23(2) of the Mamlatdar Courts Act. I do not find any reason to disturb such concurrent findings of fact recorded by the Mamlatdar and Sub-Divisional Officer. Writ Petition, being devoid of merits, is accordingly rejected.

(SANDEEP V. MARNE, J.)