

IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT AURANGABAD

931 WRIT PETITION NO. 5358 OF 2022

NAGO HIRAMAN SONAWANE  
VERSUS  
THE STATE OF MAHARASHTRA THROUGH THE SECRETARY  
AND ANOTHER

...  
Advocate for the Petitioner : Mr. Patil Atmaram J.  
AGP for Respondent/State : Ms. R.R. Tandale  
Advocate for Respondent No.2 : Mr. Bhokarikar Madhav M.  
...

CORAM : KISHORE C. SANT, J.  
DATE : 3<sup>rd</sup> SEPTEMBER, 2024.

PER COURT :

1. Heard the parties.
2. The petitioner is the original respondent in Vahiwat Application No. 1 of 2019 before the Tahsildar, Raver. The said application is filed under the Mamlatdar's Court Act seeking a right of way under Section 5 (2) of the Act. The learned Tahsildar by considering the material on record and after hearing the parties held that there is a right of way in existence since long. While deciding said application he has also considered the judgment and decree passed by the C.J.J.D., Raver in RCS No. 177 of 1971, wherein, the learned Court has

clearly held that there is a right of way to respondent by way of the judgment and order dated 31.07.1973. The Tahsildar therefore, allowed the application.

3. The present petitioner aggrieved thereby, approached the learned SDO by filing a revision under Section 23 (2) of the said Act. Learned SDO confirmed the order passed by the Tahsildar.

4. Learned Advocate for the petitioner submits that both the authorities have failed to appreciate evidence of the petitioner. The authorities have to see the present position. A decree is passed in the year 1973 by the Civil Court. When the decree was passed the lands were given Survey Numbers, whereas, after consolidation Scheme the lands are now converted into Gut numbers. Both the authorities have not considered this material aspect as well.

5. Learned Advocate for the respondent and learned AGP for State have supported the judgments. It is submitted that no Court can go beyond the decree passed by a Civil Court.

A decree passed in RCS No. 171 of 1971 was between the successors of both these parties. The parties are bound by the judgment and decree of the learned Civil Court. The petitioner has never challenged the decree passed by the Civil Court and thus the said decree has attained finality. Both the authorities have rightly considered this aspect and rightly arrived at a proper conclusion and no interference is required.

6. Considering the arguments and the judgment of the Civil Court, this Court finds that the decree passed in RCS No.171 of 1971 has now attained finality. Both the authorities have rightly considered this aspect and have passed the judgments in favour of the respondent. No illegality or perversity is pointed by the learned Advocate for the petitioner. This Court thus, does not find any merit in the Writ Petition. The Writ Petition, therefore, is dismissed. No order as to the costs.

**( KISHORE C. SANT )**  
**JUDGE**

mahajansb/