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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5808 OF 2024
(Dashrath Yogiraj Akuskar and Others Vs. The State of Maharashtra and Others)

Mr.B.R.Kedar, Advocate for the Petitioners.
Mr.B.M.Dhanure, AGP for the Respondent/State.

(CORAM : RAVINDRA V. GHUGE AND
Y.G.KHOBRADE, JJ.)

DATE : JUNE 20, 2024

PER COURT :

1. The contention of the Petitioners is that 6 persons who are Respondent Nos. 5 to 10, are encroachers and they have blocked a village road, which reaches out to the *Aadas to Dharur* public road of 33 ft. passing on the eastern side to the western side of the village *Aadas*. It is said that last more than 2 years, these Respondents have created an obstruction. A map is placed on record, which is issued by the Sectional Engineer, P.W.D.

2. A bare perusal of the sketch map indicates that the path at issue is 15 meters away from the *Dharur – Aadas* Road and is adjoining agricultural fields, as is described as इतर शेतक-यांना असणारा वरिवाटीस रस्ता

and बैलगाडीचा रस्ता खोदलेला (a cart road which is dug up by someone). The Petitioners allege that it is Respondent Nos. 5 to 10, who have dug up the said road to create an obstruction. The Petitioners contend that this aspect was brought to the notice of the Public Works Department, which has issued notice to these 6 Respondents, on 08.06.2023, to clear the road.

3. The photographs placed on record indicate agricultural parcels of land. It will have to be investigated as to whether any of these private Respondents have any agricultural land to which they have a title. The tar road highway appears to be quite away from the portion of the road, which is adjacent to the agricultural field. The Sectional Engineer has opined that it is a village cart road and a *vahivat* (वहिवाट) road.

4. Section 5(2) of the Mamlatdar's Courts Act, 1906 is a remedy available to the Petitioners to initiate appropriate legal proceedings. The photographs indicate that some thorny branches of a dried up tree are placed on the said cart road, which the Petitioners' claim to be the village road which connects to the *Dharur-Aadas* road.

5. Considering the above, we do not find it appropriate to exercise our Writ jurisdiction in such matters, where there are individuals alleging encroachment against each other. If the Petitioners desire, they may avail of the remedy as is permissible under the Mamlatdar's Courts Act or they are also be at liberty to approach the Civil Court for appropriate reliefs, since all these issues will have to be gone into as the very submission of the Petitioners rests on the premise that the old road is of 1329 Fasli.

6. The disposal of this Petition will not be an impediment for the Revenue Authorities to proceed to remove the obstruction by following the due procedure of Law in the light of the notice dated 08/6/2023.

7. With the above observations, **this Writ Petition is disposed off.**

(Y.G.KHOBRADE, J.)

(RAVINDRA V. GHUGE, J.)