

Shabnoor

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

WRIT PETITION NO.11720 OF 2024

Minal Ganpat Sathe & Others ... Petitioners

V/s.

The State of Maharashtra & Others ... Respondents

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Mr. Dhananjay Chavan for Petitioners.

Mr. P. P. Kakade, Government Pleader with Mr. O. A. Chandurkar, Additional Government Pleader with Mrs. G. R. Raghuwanshi, AGP for Respondent No.1.

Mr. Rajesh S. Datar a/w Ms. Druti Datar for Respondent Nos. 2 to 4.

**CORAM : DEVENDRA KUMAR UPADHYAYA, CJ
& AMIT BORKAR, J.**

DATED : SEPTEMBER 19, 2024

ORAL ORDER: (Per Amit Borkar, J.)

1. This writ petition, filed under Article 226 of the Constitution of India, seeks the issuance of a writ of mandamus directing the respondents not to establish a new Court at Kurduwadi, Taluka Madha, District Solapur.

2. The petitioners have raised several grounds in opposition to the establishment of the new Court at Kurduwadi. Primarily, they argue that the decision lacks any rational criteria. They contend that the judge-to-case ratio does not justify the creation of a new court, as the volume of litigation is insufficient. Additionally, they submit that the distance

between the existing Court at Madha and the proposed Court at Kurduwadi is merely 12 kilometers, a distance they claim is easily navigable. Furthermore, the petitioners argue that the existing Court at Madha is adequately equipped to handle the needs of litigants in the region.

3. At the heart of this petition is the question of maintainability. The pivotal issue that this Court must decide is whether the petitioners have established any enforceable legal right that would warrant the issuance of a writ of mandamus, thereby preventing the respondents from proceeding with the establishment of a Taluka Court at Kurduwadi.

4. It is a well-settled principle of law that a writ of mandamus can only be issued where there exists a clear and enforceable legal right in favor of the petitioner, coupled with a corresponding duty on the part of the respondent authority. The petitioners are required to demonstrate either a failure to perform a statutory duty or a violation of a legal right. In ***Director of Settlements, A.P. & Ors. v. M.R. Apparao & Anr., (2002) 4 SCC 638***, the Hon'ble Supreme Court held:

"A writ of mandamus is issued to compel the performance of a statutory duty by a public authority. A mandamus can be issued only when the petitioner has a legal right to the performance of a legal duty by the authority concerned."

5. In the present matter, the petitioners have failed to establish any such legal right or statutory duty. The establishment of a Taluka Court falls squarely within the administrative discretion of the State Government, as

provided under the Bombay Civil Courts Act, 1869. The Act empowers the District Judge and the State Government, in consultation with the High Court, to make decisions regarding the establishment of courts. Importantly, the provisions of this Act confer administrative powers and responsibilities but do not create a personal or enforceable right in favor of the petitioners. Articles 233 and 235 of the Constitution of India, which pertain to the appointment of District Judges and the control of subordinate courts by the High Court, are likewise unrelated to any individual rights of the petitioners in this case.

6. The petitioners have not demonstrated any infringement of a legal or constitutional right arising from the proposed establishment of the Court at Kurduwadi. They have also failed to show how such a decision would be contrary to public interest or violate any constitutional principles. It must be emphasized that the establishment of judicial infrastructure, including Taluka Courts, is a matter of public policy, primarily aimed at enhancing access to justice, especially in rural and semi-urban areas. The decisions in this regard lie within the domain of executive discretion, and in the absence of any specific legal injury, the petitioners cannot seek judicial intervention.

7. In view of the well-established legal principles and the factual circumstances of this case, the petitioners have failed to demonstrate any enforceable right or statutory obligation that would justify the issuance of a writ of mandamus.

8. For the reasons set forth above, this writ petition is devoid of merit and stands dismissed.

9. There shall be no order as to costs.

(AMIT BORKAR, J.)

(CHIEF JUSTICE)