

Shabnoor

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

WRIT PETITION NO.661 OF 2024

SHABNOOR
AYUB
PATHAN
Digitally signed by
SHABNOOR AYUB
PATHAN
Date: 2024.03.13
18:09:55 +05:30

Dattatray Kondaji Dongre

... Petitioner

V/s.

Dattatray Dagadu Lohate & Ors

... Respondents

Mr. Anand V. Patwardhan a/w Ms. Komal M. Gosavi
and Ms. Purnima Rao i/by A & A Law, for Petitioner.

Mr. J. P. Patil, AGP for State/Respondents.

CORAM : AMIT BORKAR, J.

DATED : MARCH 13, 2024

P.C.:

1. Challenge in this writ petition is to the order passed by the Sub-Divisional Officer in exercise of power under Section 23(2) of the Mamlatdars' Courts Act, 1906 dismissing revision filed by the petitioner challenged an order passed by the Tehsildar under Section 5(2) of the Mamlatdars' Courts Act, 1906.

2. The Mamlatdars' Court, based on panchnama drawn by the Authority signed by both sides recorded a finding that right to road has allowed by respondent which was not in existence. He, therefore, directed to remove the obstruction over the said road.

3. The petitioner challenged the order of Tehsildar before the Sub-Divisional Officer. The Sub-Divisional Officer by the reasoned

order recorded a finding that the panchnama drawn by the Circle Officer on 23 March 2018 in front of independent panch indicates existence of 100 meters motor-able road. The finding recorded by the both Authorities below are based on the material in the form of panchnama. The finding of fact are based on the material and, therefore, there is no need to interfere in such finding of fact.

4. Learned Advocate for the petitioner submitted that an earlier application filed by the respondent was withdrawn. The earlier application was containing an admission of no such road was in existence.

5. On perusal of the contents in an earlier application which was withdrawn on the ground that the application was not containing sufficient details in relation to respondent's right to claim of right to way. Such application was permitted to be withdrawn by the Mamlatdars' Court. The fresh application contains such details. Since, the existence of road is based on panchnama drawn by the Circle Officer, the finding of fact accepting such panchnama cannot be termed as perverse. Hence, the writ petition is dismissed.

(AMIT BORKAR, J.)