



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

947 WRIT PETITION NO. 8936 OF 2022

Shivanand Govindsingh Agnivanshi

Age : 31, Occ : Agril

R/o. Yahlegaon, Tq. Kalamnuri,

Dist. Hingoli

...Petitioner

VERSUS

1. Baheruji S/o Dagaduji Shinde
Age : 58, Occ: Agril
2. Dnyaneshwar Shebrao Nangre
Age : 42, Occ : Agril.
3. Shantabai W/o Shebrao Nangre,
Age : 60, Occu : Agril
- 4-A] Prabhakar S/o Tukaram Shinde,
Age : Major, Occu. Agri,
- 5-A] Amol S/o Kishan Shinde,
Age : Major, Occu. Agri,
Both R/o. Yehlegaon, Tq. Kalamnuri
Dist. Hingoli,
6. Ananda S/o Bhaurao Shinde,
Age : 48, Occ: Agril
- All are resident of Yehlegaon,
Tq. Kalamnuri, Dist. Hingoli
7. The State of Maharashtra
Through the Tehsildar
Kalamnuri, Tq. Kalamnuri
Dist. Hingoli
8. The Sub-Divisional Officer

Kalamnuri Dist. Hingoli

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Mr. D. M. Shinde, Advocate for the Petitioner

Dr. Kalpalata Patil-Bharaswadkar, Addl. G. P. for Respondents/State

Mr.D. K. Dagadkhare, Advocate for Respondent Nos.1,2,3,4A,5/A&6.

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CORAM : ROHIT W. JOSHI, J.

DATED : 13th JUNE 2025

JUDGMENT :-

1. The present petition takes exception to order dated 19.07.2021 passed by the Tahsildar, Kalmanuri under Section 5 of the Mamlatdar's Courts Act, 1906 (for short "the Act") in case No.2020/ROR/KV thereby allowing the application filed by the respondents seeking right of way and removal of obstruction on road passing through the field boundry i.e. Dhura of field Gut No.457 belonging to the petitioner, as also, the order dated 29.07.2022 passed by the learned Sub Divisional Officer, Kalmanuri in Revision No.2021/ROR/Appeal/CR/318 dismissing the said revision filed by the petitioner under Section 23(2) of the Act.

2. The learned Counsel for the petitioner has drawn attention to the application filed by the respondents seeking way through the Dhura of his land. His contention is that the application is not filed in accordance with Section 7 of the Act and the formalities contemplated

by Sections 8 to 11 of the Act for curing the said defect have also not been followed. He further contends that the application does not disclose that the alleged cause of action had arisen within a period of six months from the date of filing of the application. As regards merits of the matter he contends that there is no documentary evidence to suggest existence of way which was sought by the respondents. His contention is that a new way has been created in favour of the respondents although, the said jurisdiction is not vested with the Mamlatdar under the provisions of the Act.

3. Per contra the learned Counsel for the respondents submits that both authorities have recorded concurrent findings of fact based on available materials on record. He contends that on two occasions spot panchanama is prepared. He points out that in the earlier panchanama existence of the road is shown whereas in the subsequent panchanama dated 24.12.2020, the existence of road is not shown since the same was destroyed/demolished by the petitioner.

4. Perusal of the application filed by the respondents will indicate that it certainly does not fulfill the requirement of Section 7 of the Act and the date of alleged cause of action has also not been mentioned.

The record also does not indicate that formalities contemplated under Sections 8 to 11 of the Act were fulfilled in order to cure the said defect. The application as such was not maintainable and was liable to be rejected. The learned authorities have erred in not rejecting the application on this count.

5. As regards the cause of action, the averments in the application also do not disclose the date of alleged cause of action. However, having regard to the scheme of the Act this defect could have been got cured by following the mandate of Section 8 and 9 of the Act. The learned Mamlatdar could have ascertained the date of alleged cause of action from the respondents/original applicants which he has failed to do.

6. In view of the aforesaid, both the impugned orders are quashed and set aside and the matter is remanded back to the learned Mamlatadar for deciding the matter afresh, strictly in accordance with the procedure prescribed under the Act.

7. It needs to be clarified that since the right is claimed through a Dhura and it is well known that everybody has a right of footway through the Dhura although the order are quashed and set aside right

of path way will be available to the respondents, however, till the adjudication of the matter right to use the road as a cartway will not be available.

8. Parties are directed to appear before the learned Mamlatdar on 01.07.2025. The learned Mamlatdar is directed to decide the proceedings finally before 31.12.2025.

9. Writ Petition is disposed of accordingly.

10. Pending civil applications, if any, stand disposed of.

[ROHIT W. JOSHI, J.]