

VRJ

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

WRIT PETITION NO.14050 OF 2017

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Dinesh Budhaji Harmalkar & Anr.	... Petitioners
V/s.	
The Collector Sindhudurg & Ors.	... Respondents

Mr. Prajakt M. Arjunwadkar for the petitioners.

Mr. S. D. Rayrikar, AGP for the State.

CORAM : AMIT BORKAR, J.

DATED : FEBRUARY 6, 2025

P.C.:

1. Respondent Nos. 3 and 4 filed an application under Section 5(2) of the Mamlatdars' Courts Act, 1906, seeking removal of an impediment on a road traversing Survey Nos. 29 and 32. In support thereof, the Tahsildar, acting in accordance with his statutory duties, relied upon Form No. 26—duly maintained in the courts of regular business by the revenue authority—to record a finding attesting to the existence of the road. Moreover, the Tahsildar adduced a certificate issued by the Headmaster of a nearby school, thereby supplementing and corroborating his findings. It is noted that such evidence, being contemporaneous and reflective of the conditions prevailing at the time of inspection, was produced in good faith and within the ambit of the relevant statutory provisions.

2. The Revisional Authority, by the impugned order, confirmed

the order passed by the Tahsildar, observing that the rights of the applicant are such that they can conclusively be adjudicated by the competent Court. The Authority further noted that the Tahsildar had conducted a proper inspection, the findings of which incontrovertibly indicate the existence of the road. In this regard, it is emphasized that the evidence relied upon is *prima facie* and, in the context of summary proceedings, is sufficient to justify the conclusions drawn, subject to further evidentiary testing should the matter advance to a full trial.

3. The impugned order, having been passed in summary proceedings, is supported by material evidence which, by its quality and relevance, is deemed sufficient as proof in such proceedings. However, it is expressly clarified that the findings recorded in the impugned order by both the Tahsildar and the Collector shall not preclude or unduly influence the adjudication of the rights of the parties in the civil suit pending before the Civil Court. The Civil Court, when adjudicating the existence of the road, shall afford the parties the opportunity to present additional evidence and conduct a comprehensive examination of all pertinent facts. Thus, while the summary findings may serve as a useful reference, they do not constitute a conclusive determination of the rights of the parties in a full and fair judicial proceeding.

4. In view of the above clarifications and the evidentiary framework applicable to summary proceedings vis-à-vis full civil litigation, the writ petition is hereby disposed of. No costs.

(AMIT BORKAR, J.)