

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 1878 OF 2018

Anil S/o. Noorsingh Rathod,
Aged about 40 years, Occ. Agriculturist,
R/o. Mokh, Tah. Digras,
Dist. Yavatmal.

.... **PETITIONER.**

// VERSUS //

1. Jitendra Ramrao Rathod,
Aged about 37 years,
Occ. : Agriculturist,
R/o. Mokh, Tah. Digras,
Dist. Yavatmal.
2. Sub-Divisional Officer,
Pusad, Dist. Yavatmal.
3. Naib Tahsildar cum Member,
Mamlatdar Court, Digras,
Tah. and District : Yavatmal.

.... **RESPONDENTS.**

Shri M.P.Kariya, Advocate for Petitioner.
Shri R.J.Shinde, Advocate for Respondent No.1.
Ms H.N.Jaipurkar, A.G.P. for Respondent Nos. 2 & 3.

CORAM : **ANIL S. KILOR, J.**
DATED : **FEBRUARY 08, 2023**

ORAL JUDGMENT :

1. Heard.
2. **RULE.** Rule made returnable forthwith. Heard finally by consent of the learned counsel for the parties.
3. Maintaining the order passed by the Tahsildar, dated 22/12/2016 by the Sub-Divisional Officer by the impugned order and directing the petitioner to remove the obstruction allegedly created by the petitioner in the approach way of the respondent No.1 to his field from the field of the petitioner, is under challenge in this writ petition.
4. The learned counsel for the petitioner submits that in a suit filed under Section 5 of the Mamalatdar's Court Act, 1906, by the respondent No.1 before the respondent No.3 there is a mention that, the approach way of the respondent No.1 was obstructed by the petitioner on 19/06/2015. It is submitted that the limitation for filing of such suit is six months under Section 5(3) of the Act. Whereas, the suit is filed on 13/12/2015 i.e. beyond the period of limitation.

5. It is submitted that though this ground and other grounds were raised on merits before the Sub-Divisional Officer while challenging the order dated 22/12/2016 passed by the Tahsildar, without recording any finding by the Sub-Divisional Officer, the revision application was rejected. He, therefore, submits that the impugned order needs to be quashed and set aside.

6. On the other hand the learned A.G.P. supports the impugned order dated 04/10/2017 passed by the Sub-Divisional Officer and submits that the Sub-Divisional Officer considered the record and also the findings recorded by the Tahsildar and as no illegality was found the order of the Tahsildar was maintained.

7. The learned counsel for the respondent No.1 submits that, it cannot be said that, the suit was barred by limitation as there was a continuous cause of action and therefore, the Tahsildar has rightly entertained the suit and decided the same in favour of the respondent No.1. He, further submits that no error is committed by the Sub-Divisional Officer in confirming the order of the Tahsildar.

8. In the light of the rival submissions, I have perused the writ petition, documents and the impugned orders.

9. From the revision application filed by the petitioner challenging the order of the Naib-Tahsildar, it is evident that numerous grounds were raised including the grounds on merit as well as limitation.

10. It is further evident from the order of the Sub-Divisional Officer that without looking into the grounds raised by the petitioner and without dealing with the same, the revision application was dismissed.

11. The only observation made by the Sub-Divisional Officer is that, the Mamalatdar, after taking into consideration the spot inspection report and after giving sufficient opportunity to the parties to the proceedings arrived at the conclusion that, the petitioner has obstructed the way of the respondent No.1 and as the matter is about right of approach way, there is no need to interfere with it.

12. Thus, it is apparent that without recording the reasons and without dealing with the challenge raised by the petitioner, the revision application came to be decided.

13. Accordingly, I am of the opinion that the present matter needs to be remanded back to the Sub-Divisional Officer, to decide the same afresh. Accordingly, I pass the following order:

- i) The Writ Petition is partly allowed.
- ii) The order passed by Sub-Divisional Officer dated 04/10/2017 is hereby quashed and set aside.
- iii) The matter is remanded back to the Sub-Divisional Officer to decide the revision application afresh after hearing both the parties, as expeditiously as possible.
- iv) Both the parties shall appear before the Sub-Divisional Officer on 20/02/2023.

The Writ Petition is **disposed of** accordingly. No order as to costs.

(ANIL S. KILOR, J)

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