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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

8 WRIT PETITION NO. 9557 OF 2024

KONDIBA GANPAT DAMALE

VERSUS

THE STATE OF MAHARASHTRA THROUGH SUB DIVISIONAL OFFICER AND
OTHERS

Mr.J.V. Patil, Advocate for the petitioner.

Mr.V.S.Badakh, AGP for the respondent-State.

Mr.R.S.Kasar, Advocate for respondent Nos. 4,7,9 to 19.

CORAM : KISHORE C. SANT, J.

DATE : 14.10.2024

PC :-

01. Heard learned Advocates for the parties. The challenge is to an order passed by the learned Sub-Divisional Officer, Pathardi, dated 24.06.2024 passed in RTS/Revision Application No. 69 of 2023, by which revision (styled as appeal) came to be rejected by confirming the judgment and order passed by the learned Tahsildar dated 21.01.2023 in Vahiwat Case No. 24 of 2018, filed by the respondent under section 5 of the Mamlatdars' Courts Act. Learned Mamlatdar by his judgment and order allowed the application and directed present petitioner to give way

to the respondents by removing obstruction. The main challenge raised in the petition is as regards section 5 (2) (4), which provides that the suit has to be brought within six months from the date of cause of action. The learned Advocate for the petitioner has taken this Court through the application filed by the respondents. From the application it is seen that no specific date is given of cause of action. Application was filed on 24.05.2018. The panchanama was prepared. In the panchanama it is stated that fencing was erected 4-5 years ago. He further pointed out second panchanam, which shows that the road is obstructed from three years. Even from the written submissions, the wording appears as since 2018 from time to time fencing is erected by the present petitioner. Since 2016 till 2018 from time to time fencing is raised. He thus submits that there is absolutely no case made out to entertain the application by the Tahsildar, as the application itself was not maintainable as not within limitation. He thus submits that the proceedings is required to be set aside. He relies upon judgments in the case of **Shankar Vs. The State of Maharashtra, reported in MANU/MH/3436/2021** and **Vishnu Sukhdev Ghanvat & Ors. Vs. The Collector, Ahmednagar & Ors., reported in MANU/MH/2022/2016** and two other judgments in support of the submissions. He lastly prayed for allowing the petition.

02. The learned Advocate for the respondents vehemently opposed the petition. He submits that it has sufficiently come on record that the road is obstructed by the petitioner. The wording that from time to time road is obstructed shows that it is continuous cause of action. He relies upon judgment in the case of **Sanjay & Ors. Vs. The Collector, Collector Office, Ahmednagar and Ors., reported in 2022 (5) AIR BomR 329**. In that case a suit was filed within two months of cause of action and still the Mamlatdar held that the suit was barred by limitation. In view of the same, the judgment and order passed by the Mamlatdar and the judgment of the Sub-Divisional Officer were quashed and set aside. The suit was remanded to Mamlatdar for fresh decision.

03. This Court finds that the judgment in the case of **Sanjay (Supra)** is not applicable to the present facts of the case. Therein the suit was filed within limitation still the Authorities had recorded that the suit was not within limitation and in that view the proceeding was remanded to Mamlatdar. From the discussion above, in the present case the suit itself was not filed within limitation and therefore the exercise of power by the Authorities was not proper. Both the Authorities have failed to appreciate this inherent lacuna in the case of the respondents. This Court has no hesitation in recording that the proceeding itself was taken

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without jurisdiction and still was entertained. Thus, the judgment and order passed by the learned Sub-Divisional Officer dated 24.06.2024 is quashed and set aside. The writ petition is allowed and is disposed off with no order as to costs.

[KISHORE C. SANT, J.]

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