



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8343 OF 2024

Sanjay Khandu Dalvi And Another
VERSUS
The Sub Divisional Officer And Others

- Mr. N. S. Jaju, Advocate for the Petitioners
- Mr. B. A. Shinde, AGP for the Respondent Nos. 1 and 2/State
- Mr. S. P. Tiwari h/f Mr. N. L. Chaudhari, Advocate for the Respondent Nos. 3 to 5 (VC)

CORAM : R. M. JOSHI, J

DATE : APRIL 09, 2025

PER COURT :

1. By consent of both sides, Petition is heard finally at the stage of admission.

2. This Petition takes exception to the order dated 16.02.2024 passed by Sub-Divisional Officer in Revision No. 123/2023 confirming the order dated 16.05.2023 passed by Tahsildar, Jafrabad in Rasta Case No. 2022/JAMA-1/CR13.

3. Learned Counsel for the Petitioners has drawn attention of the Court to the spot panchnama on the basis of which Tahsildar has passed impugned order to state that in the spot panchnama there is absolutely no

observation with regard to the actual situation at the spot and said panchnama only records the statements made by parties/witness present at that time. According to him, an error is committed by the Authority in not inspecting the spot and recording the observations with regard to the situation thereof. He raises objection to the maintainability of the application before Tahsildar on the ground that there is no cause of action spelt out therein. It is his submission by referring to provision of Section 5(2) of the Mamlatdar's Court's Act, 1906 that the said proceedings are mandatorily to be filed within a period of six months from the date of accrual of cause of action. To support his submissions, he placed reliance on the judgment of Division Bench of this Court in case of Vishnu Sukhdev Ghanvat and Others vs. Collector, Ahmednagar and Others, 2017(1) Mh.L.J. 811.

4. Learned Counsel for the contesting Respondents supported the impugned order. According to him, panchnama is carried out and the order passed by the Authorities below do not deserve interference.

5. Perusal of the application indicates that the

applicant has specifically averred therein that there is a obstruction caused by the Respondents/Petitioners therein to the existing way of the Applicant. It is also specifically stated that he is residing in the agricultural field and hence, he is finding it difficult to go to the said place. Perusal of the reply does not indicate that any objection was raised by the Petitioners herein with regard to there being no cause of action or the application filed by the Applicant being barred by limitation. Since no such objection was raised at first available opportunity, this Court does not find any substance in the contention raised in that regard now.

6. On merit of the orders, however, this Court finds substance in the contention of learned Counsel for the Petitioners that the spot panchnama does not indicate the position of the spot inspected by the Authorities. The said panchnama only reproduces the statements made by witnesses before the Authority. In an application filed under Section 5 of the Act the Tahsildar is required to consider the situation/position of the spot coupled with other

evidence for the purpose of deciding the dispute. In such circumstances, the spot panchnama assumes importance. Here in this case, Circle Officer has conducted the spot panchnama, however, has not recorded any observations which were found at the spot.

7. As the result of above discussion, Petition stands allowed. Impugned orders are set aside. Proceeding of Rasta Case No. 2022/JAMA-1/CR13 is relegated back to the Tahsildar for decision afresh. Tahsildar is directed to personally conduct the spot inspection and then to pass appropriate order in accordance with law.

(R. M. JOSHI, J.)