

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1191 OF 2014

Bhanudas s/o Tatyrao Kakade,
Age: 50 years, Occupation: Agriculture,
R/o Kandari, Taluka Ghansawangi,
District Jalna

...PETITIONER

VERSUS

- 1) The State of Maharashtra
Through its Secretary,
Revenue Department,
Mantralaya, Mumbai-400 032
- 2) The Divisional Commissioner,
Aurangabad Division, Aurangabad
- 3) The Additional Divisional Commissioner,
Aurangabad Division, Aurangabad
- 4) The Additional District Collector of Jalna,
District Jalna
- 5) The Tahsildar, Ghansawangi,
Taluka Ghansawangi, District Jalna
- 6) Narayan s/o Sitaram Ugale,
Age: Major, Occupation: Agriculture,
R/o : Jiradgaon, Taluka Ghansawangi,
District Jalna
- 7) Sarjerao s/o Sitaram Ugale,
Age: Major, Occupation: Agriculture,
R/o : Jiradgaon, Taluka Ghansawangi,
District Jalna

...RESPONDENTS

Mr S.T. Veer, Advocate holding for Mr R. V. Dasalkar, Advocate for
petitioner;
Mrs Y.M. Kshirsagar, Asstt. Govt. Pleader for respondents No.1 to 5;
Mr S. G. Joshi, Advocate for respondent Nos. 6 and 7

CORAM : N.W. SAMBRE, J.

DATE : 9th March, 2015

ORAL ORDER

The petitioner was unsuccessful before the Additional Commissioner, Aurangabad Division, Aurangabad, in a revision preferred under section 257 of the Maharashtra Land Revenue Code, wherein the issue as regards the right of way, was canvassed.

2. Learned Counsel appearing on behalf of the petitioner, while questioning the legality and validity of the order dated 5th December, 2013, passed by the Additional Collector, would urge that the said authority has advanced the date of hearing of the said revision without intimation or notice to the petitioner and in support thereof, has placed reliance on the entry taken in note sheet on 29th October, 2013, in the revision before the said authority. He would further urge that the said entry depicts tampering of the date by the authority or the officials working under the said authority.

3. Learned Counsel appearing on behalf of respondents no.6 and 7 would urge that the date of hearing was fixed on 29th October, 2013 and thereafter the matter was adjourned to 30th October, 2013, which was well within the knowledge of the petitioner and he has acknowledged the said date by putting his signature on the same. He would urge that there was

no tampering or advancement of the date of hearing. He would further urge that the said authority has proceeded to pass the order on merits of the matter.

4. Learned Asstt. Govt. Pleader appearing on behalf of respondents no.1 to 5, while taking me through the original record, has invited my attention to the fact that the note-sheet written on 29th October, 2013 is not endorsed by the Additional Commissioner. She would further urge that on 29th October, 2013, the matter was adjourned to 30th October, 2013 for hearing, and final order in the matter was passed on 5th December, 2013. According to her, the order could be gone into on merits, so as to analyze its legality and validity.

5. In view of the allegations made herein above, this Court has summoned the record and proceedings of the present case and upon verifying the entry of date made in the farad sheet on 29th October, 2013, noted that if the adjourned date, i.e. 30th October, 2013 is minutely seen, there appears to be tampering of the date, which was fixed for hearing. It appears that in between the date, month and year, earlier the person maintaining the said record has inserted dots, so as to segregate the date, month and year, however; while tampering he has used in between the date and month a dash and in between month and year a dot, which is uncommon in the entire farad, but for the said date. It is also noted by this

Court that there is over-writing in the date. The said illegality is perpetuated further as said date '30th October, 2013' was not endorsed by the authority as all the earlier dates and entries are endorsed by the authority, i.e. Additional Divisional Commissioner.

6. Upon perusal of the original record and having noticed above tampering, *prima facie* this Court is of the view that the same goes to the benefit of respondents no.6 and 7 herein.

7. Be that as it may, this Court refrains itself from making any further observations *qua* the inquiry and the action to be taken against the guilty, however, is of the opinion that the said act on the part of the authority passing the order impugned, to the detriment of the petitioner herein, is in violation of principles of natural justice and the same amounts to denial of opportunity of hearing.

8. In that view of the matter, I pass the following order :-

The order dated 5th December, 2013, passed by Additional Commissioner, Aurangabad Division, Aurangabad, in Case No.ROR/Appeal/362/2012/J, is quashed and set aside. The said proceedings are restored to the file of the Additional Commissioner, who is directed to decide the said proceedings afresh, having regard to the observations made herein above.

(5)

wp1191.14.

Writ Petition stands allowed in above terms with no order as to costs.

(N.W. SAMBRE, J.)

amj