

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7301 OF 2014

- 1) Sukhdev Shrihari Giramkar,
Age: 47 years, Occu.: Agril.,
- 2) Bapu Shrihari Giramkar,
Age: 52 years, Occu.: Agril.,
- 3) Ganpat Shrihari Giramkar,
Age: 62 years, Occu.: Agril.,

All R/o.: Anandwadi, Taluka: Shrigonda,
District : Ahmednagar

...PETITIONERS

VERSUS

- 1) Topaji @ Bhausahab Bapurao Giramkar,
Age: 57 years, Occu. : Agril.,
- 2) Sau. Savitabai Topajirao Giramkar,
Age: 52 years, Occu. : Agril.,
- 3) Sau. Rohini Ramesh Bhoite,
Age: 24 years, Occu. : Agril.,
- 4) Sau. Kavita Santosh Bhoite,
Age: 22 years, Occu. : Agril.,
- 5) Surendra Gorakh Bhoite,
Age: 37 years, Occu. : Agril.,
- 6) Anna Dattu Bhoite,
Age: 47 years, Occu. : Agril.,

Respondent Nos. 1 to 6
R/o. : Anandwadi, Taluka: Shrigonda,
District : Ahmednagar

- 7) The Tahasildar, Shrigonda,
Tahasil Office, Shrigonda,
Taluka : Shrigonda,
Dist.: Ahmednagar

- 8) The Sub-Divisional Officer,
Shrigonda-Parner Division,
Ahmednagar,
District : Ahmednagar

..RESPONDENTS

Mr P. B. Shirsath, Advocate for petitioners;
Mr Sanket Kulkarni, Advocate holding for Mr S. P. Dhoble, Advocate for
respondent Nos.1 to 4 & 6;
Mr D. B. Rode, Advocate for respondent No. 5;
Mr R. P. Phatke, Asstt. Govt. Pleader for respondent Nos. 7 & 8

**WITH
WRIT PETITION NO.7405 OF 2014**

Surendra S/o Gorakh Bhoite,
Age: 37 years, Occu. : Agri.,
R/o Anandwadi, Tal Shrigonda,
Dist : Ahmednagar

..PETITIONER
(Orig. Defendant No. 7)

VERSUS

- 1) The Sub Divisional Officer,
Shrigonda- Parner, Ahmednagar,
Dist – Ahmednagar
- 2) The Tahsildar,
Shrigonda, Tal – Shrigonda,
Dist – Ahmednagar
- 3) Sukhdev Shrihari Giramkar,
Age: 47 years, Occu: Agriculture,
- 4) Bapu Shrihari Giramkar,
Age: 52 years, Occu.: Agriculture,
- 5) Ganpat Shrihari Giramkar,
Age: 62 years, Occu.: Agriculture,
- 6) Topaji @ Bhausahab Bapurao Giramkar,
Age: 57 years, Occu. : Agriculture,
- 7) Sau. Savitabai Topajirao Giramkar,
Age: 52 years, Occu. : Agriculture,

- 8) Sau. Rohini Ramesh Bhoite,
Age: 24 years, Occu. : Agriculture,
- 9) Sau. Kavita Santosh Bhoite,
Age: 22 years, Occu. : Agriculture,
- 10) Anna Dattu Bhoite,
Age: 47 years, Occu. : Agriculture,

Respondent Nos. 3 to 10
R/o. : Anandwadi, Tal: Shrigonda,
Dist : Ahmednagar

..RESPONDENTS
(Res. No. 3 orig. applicant)

Mr D. B. Rode, Advocate for petitioner;
Mr R. P. Phatke, Asstt. Govt. Pleader for respondent Nos. 1 and 2;
Mr P. B. Shirsath, Advocate for respondent Nos. 3 to 5;
Mr Sanket Kulkarni, Advocate holding for Mr S. P. Dhoble, Advocate for
respondent Nos. 8 to 10

CORAM : N.W. SAMBRE, J.

DATE : 7th April, 2015

ORAL ORDER :

The Mamlatdar, Shrigonda, in exercise of powers under the Mamlatdars' Courts Act, 1906 (for short the "Act"), passed order dated 23rd September, 2013, in favour of the petitioners in Writ Petition No.7301 of 2014, ordering the respondents not to create any interference in the right of way of the petitioners, which order was reversed by the Sub-Divisional Officer in an appeal under section 247 of the Maharashtra Land Revenue Code. The Sub-Divisional Officer, Shrigonda-Parner, by order dated 30th May, 2014, remanded the matter back to the Mamlatdar, Shrigonda, for a decision afresh.

2. The petitioner in Writ Petition No.7405 of 2014, who was defendant before the Mamlatdar, raised a preliminary objection to the tenability of proceedings before Mamlatdar, as according to him, the claim was barred by limitation.

3. Having heard Mr P.B. Shirsath, learned Counsel appearing on behalf of original plaintiff/petitioner no.1 in Writ Petition No.7301 of 2014 and upon perusal of the order passed by the Sub-Divisional Officer, it is noticed that the Sub-Divisional Officer has passed a cryptic order by making vague observations about non-compliance of the requirement of sections 7, 8, 9 and 10 of the Act. There is no discussion or reasoning in support of such findings.

4. The other findings recorded by the Sub-Divisional Officer, i.e. non-preparation of the spot panchnama and then making a contrary observation that the panchnama which was drawn and produced, was objected to by the parties.

5. In view of above, in my opinion, the submission of Mr Shirsath, learned Counsel appearing on behalf of the petitioners is required to be accepted. One more aspect of which this Court must take note is that the remedy provided in the statute against the order of Mamlatdar is in the form of revision before the Sub-Divisional Officer. However, in the present case, the Sub-Divisional Officer has proceeded to exercise powers of appeal under section 247 of the Maharashtra Land Revenue Code, which has hardly any application.

6. In the light of above, the order passed by the Sub-Divisional Officer lacks application of mind. In Writ Petition No.7405 of 2014, the issue of limitation is sought to be raised herein, perhaps was not raised before the said authority.

7. In view thereof, the order impugned dated 30th May, 2014, passed by the Sub-Divisional Officer, Shrigonda-Parner, in RTS Appeal No.472 of 2013, is hereby quashed and set aside and the matter is restored on the file of the Sub-Divisional Officer, Shrigonda-Parner, with a direction to decide the same afresh, in accordance with the provisions of the Act.

8. The appellant/applicant before the said authority will be at liberty to move an application for conversion of said appeal into revision, which application if so preferred, will be decided by the Sub-Divisional Officer.

9. The Sub-Divisional Officer is directed to keep in mind the observations made herein above while deciding the matter afresh.

10. The parties shall be at liberty to move an application for stay of the order of the Mamlatdar before the Sub-Divisional Officer.

11. Both writ petitions stand disposed of in terms of above directions.

(N.W. SAMBRE, J.)

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