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

WRIT PETITION NO. 7944 OF 2014

Raosaheb Bapusaheb Dhokachoule
Age : 56 years, Occu. Agriculture
R/o. Khandala, Tal-Shrirampur,
Dist – Ahemadnagar

...Petitioner

Versus

1 The State of Maharashtra
Through Revenue Department.

2 The Divisional Commissioner
Nashik Division, Nashik.

3 The Collector
Ahemednagar.

4 The Deputy Collector
(Land Acquisition) No.13
Ahemednagar.

5 The Sub Divisional Officer,
Shrirampur Division Shrirampur,
Tal – Shrirampur Dist. Ahmednagar.

6 Changdeo Kashinath Gore
Age : __ years, Occu. Agriculture,
R/o. Nandur, Tal. Shrirampur,
Dist. Ahemednagar.

...Respondents

...

Mr Abhijit B. Kale, Advocate for Petitioner;
Mr A.P. Basarkar, A.G.P. for Respondents No. 1 to 5

...

CORAM : N. W. SAMBRE, J.

DATE : 23.11.2015

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PER COURT :

It appears from the record that the Collector, Ahmednagar has endorsed and forwarded the proposal dated 3rd September, 2013, submitted by Deputy Collector, Land Reforms No.12, Ahmednagar, vide his covering letter dated 16th September, 2013, to the Divisional Commissioner, Nashik, for withdrawal of land, to the extent of 2 Acres and 36 Gunthas, from the holding of the petitioner, the extent of 10 Acres and 18 Gunthas, out of survey no.9/2 and ordered the handing over of the same to Keshav Jayram Gore and Kashinath Dagadu Gore. The Commissioner, by order dated 24th September, 2013 approved the same and Deputy Collector, Land Reforms, by order dated 21st July, 2014, directed the Tahsildar, Shrirampur, to take appropriate entries to that effect in the record.

2. Learned Counsel appearing on behalf of the petitioner, while questioning the legality and validity of the order impugned, would first attack the jurisdiction of all the authorities, including that of Divisional Commissioner, Collector and the Deputy Collector in ordering withdrawal of the land to the extent of 2 Acres and 36 Gunthas from the holding of the petitioner and allotment of the same in favour of Keshav Jayram Gore and Kashinath Dagadu Gore. According to him, once the land was allotted to him on lease, there is no question of cancelling the same, without hearing him and ordering withdrawal of the same in favour of the respondent. According to him, the petitioner being tenant is entitled for protection

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under the Tenancy Act and in view thereof, the authority who has passed the order, lacks jurisdiction. According to him, in absence of any notice or hearing to the petitioner, the orders *per se* are not sustainable.

3. While supporting the order, learned Asstt. Govt. Pleader would urge that what is sought to be done by the approval of the Divisional Commissioner is vesting of land in favour of the respondent after withdrawing the same from the petitioner, to which the respondent was lawfully entitled to. He would urge that that the petitioner was never entitled for 2 Acres and 36 Gunthas land, as the said land was originally owned by them and was subsequently put into common hotchpotch for the purpose of joint farming. He would then urge that under the scheme framed by the Government, the petitioner is entitled for the same.

4. Having considered rival submissions of the parties, it is not in dispute that the submissions made by the learned Counsel for the petitioner are not taken into account by the authorities, including that of its jurisdiction to pass such orders in the matter. The least that was expected of the authorities was to notice the petitioner in the matter and to hear him on merits, including on the issue of right of tenancy, as is claimed by him. It could be easily gathered from the record that the petitioner was not heard. Thus, in my opinion, the orders impugned herein need to be quashed and set aside and are accordingly set aside.

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5. In view of above, petition stands allowed in terms of prayer clause [C]. If the petitioner is noticed by the authorities in the present case, so as to conduct *de novo* enquiry in the matter, it shall be open for the petitioner to raise objection as regards jurisdiction of the authority to pass such an order, which objection if raised, be decided initially by the authorities, after granting an opportunity of hearing to the petitioner.

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

(N.W. SAMBRE, J.)

amj