

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5021 OF 2013

Balwant Madhav Kedar through

Lrs. and Ors.

.. Petitioners

-Versus-

Balkrishna Vinayak Patil & Ors.

.. Respondents

Mr.Vivek Salunkhe for petitioners

Mr.Tushar Sonawane for respondent No.1

Ms.M.S.Bene "B" Panel AGP for respondent Nos. 17 and 20.

CORAM : M.S.SONAK, J.

DATE : 4th February 2015.

P.C.

1] Rule. With consent and at the request of learned Counsel for respondents, rule is made returnable forthwith.

2] This petition challenges the order made by the Additional Commissioner in RTS. Revision No.323 of 2011, allowing the Revision Petition instituted by the respondent No.1 and others.

3] The S.D.O. By order dated 30th August 2008 had made an order in favour of the petitioners by allowing their appeal and setting

aside the order made by the Tahsildar on 5th October 2006. Aggrieved by the same, the respondents preferred RTS Appeal No.264 of 2008 before the Additional Collector, Nashik. The same was dismissed for want of prosecution by an order dated 30th August 2011. The review against the same was also dismissed by an order dated 20th September 2011.

4] The respondents, thereafter, preferred RTS Revision No.323 of 2011 before the Additional Commissioner. It is the case of the petitioner that the petitioner was not served with any notice. The impugned order dated 1st January 2013, however, notes that the petitioner was served by publication. The learned Counsel for the petitioners, however, contends that the impugned order does not merely restore the RTS Appeal No.264 of 2008 to the file of Additional Collector, but proceeds to allow the Appeal on merits, thereby, setting aside the order dated 30th September 2008 made by the S.D.O. Such a direction is clearly in excess of jurisdiction.

5] There is merit in the contentions raised by the learned Counsel for the petitioner. The Revisional Authority at the highest

could have directed restoration of the appeal before the Additional Collector. There was no question of deciding the said appeal which had been dismissed by the Additional Collector for want of proper service upon the parties impleaded thereto.

6] Accordingly, the impugned order dated 1st January 2013 is set aside. Further, the orders dated 30th August 2011 and 20th September 2011 made by the Additional Collector, dismissing RTS Appeal No.64 of 2008 are also hereby set aside. The said RTS Appeal No.264 of 2008 is restored to the file of Additional Collector for fresh decision in accordance with law.

7] Parties shall appear before the Additional Collector on 18th February 2015 along with authenticated copy of this order. In case, the Additional Collector finds that, apart from the petitioner, there are any other parties to the appeal, who have not been served, then, it shall be for the petitioner to take steps to expeditiously serve the said parties. In addition, the Collector shall decide the appeal in accordance with law and with expedition.

8] It is made clear that this court has not expressed any opinion on merits or de-merits of the matter. All contentions of all parties are kept open. Rule is made absolute to the aforesaid extent. There shall be no orders as to costs.

(M.S.SONAK, J.)