

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION (ST) NO. 15725 OF 2015

Vinayak S. Patil	.. Petitioner
vs.	
Vishvanath R. Thakur and ors.	.. Respondents

Mr. G.S. Godbole i/b. Mr. D.S. Patil for the Petitioner.
Mr. S.V. Gavande for Respondent No.1.
Mr. S.D. Rayrikar, AGP for Respondent Nos.2 to 4.

CORAM : M. S. SONAK, J.
DATE : 19 NOVEMBER 2015.

P.C. :-

1] By the order dated 23 June 2015, the parties were already put to notice that this petition may be heard and disposed of finally, at the stage of admission.

2] Accordingly, Rule. Rule is made returnable forthwith, with the consent of and at the request of learned counsel appearing for the parties.

3] The challenge in this petition is to the orders dated 7 February 2015 and 1 June 2015. The order dated 7 February 2015 has been made by the Tahsildar under Section 5 of the Mamlatdar Courts Act, 1906 (said Act). As against the same, the Petitioner has already

instituted a revision under Section 23 of the said Act. In these circumstances, Mr. Godbole, learned counsel appearing for the Petitioner, rightly does not press the challenge to the order dated 7 December 2015, but seeks liberty to pursue the revision already instituted. Such liberty is, accordingly, granted.

4] The Tahsildar by order dated 1 June 2015, however, has granted police assistance to enable the Respondents to construct a new road. Mr. Godbole submits that this order is totally without jurisdiction, inasmuch as such relief was neither granted in the impugned order dated 7 February 2015 nor can such relief be at all granted under the provisions of said Act. Further, Mr. Godbole points out that the order dated 1 June 2015 was made without any notice to the Petitioner.

5] Mr. Gavande, learned counsel appearing for Respondent No.1, defended the impugned order by pointing out that there was a road already in existence and since the objections were created thereon, police assistance was granted.

6] The order dated 1 June 2015, was made without any notice to the Petitioner. This is sufficient reason to set aside the same. That apart, in matters under the said Act, there is no question of permitting any party to construct a new road and that too with the assistance of police. The contention of Mr. Gavande with regard to existence of road will no doubt be considered by the revisional authority in the revision petition instituted by the Petitioner herein. However, the direction in the impugned order with regard to construction of new road and that too with police assistance is in excess of jurisdiction, apart from being made in violation of principles of natural justice. Accordingly, the order dated 1 June 2015 to the said extent is set aside.

7] The revisional authority is directed to dispose of the revision petition, as expeditiously as possible and in any case within a period of four months from today.

8] It is made clear that apart from the aforesaid aspect, this Court has not examined the merits of the matter and therefore, the revisional authority to dispose of the pending revision, in accordance with law and on its own merits.

9] All contentions of all parties are kept open to be decided by the revisional authority.

10] For the aforesaid purpose, parties to appear before the revisional authority on 2 December 2015 at 11.00 a.m. and produce the authenticated copy of this order.

10] Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

11] All concerned to act on the basis of authenticated copy of this order.

(M. S. SONAK, J.)

dinesh