

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7869 OF 2014

Manoj Vishnu Naik and ors. .. Petitioners
vs.
Smt. Kushibai K. Patil
(Kushibai Y. Naik) and ors. .. Respondents

Mr. A.V. Anturkar, Sr. Advocate a/w. Mr. Amol Gatne i/b Mr. S.B. Deshmukh for the Petitioners.
Mr. K.S. Dewal a/w. Mr. Jayesh Joshi for Respondent Nos.1 to 18, 20,21, 24 to 37, 39 & 40.
Ms Aparna Vhatkar, AGP for Respondent No.42.

CORAM : M. S. SONAK, J.

Date of Reserving the Order : 11 February 2015.

Date of Pronouncing the Order : 13 February 2015

ORDER:-

1] Rule. With the consent of and at the request of learned counsel for the parties, Rule is made returnable forthwith.

2] This petition is directed against, the orders dated 28 May 2013 and 12 December 2013 made by the Additional Commissioner, Konkan Division in the Revision Application and the Review Petition instituted by the petitioners (impugned orders).

3] Mr. K.S.Dewal, learned counsel for most of the respondents (contesting respondents), by relying upon the decision of this Court in case of *Gurudassing Nawoosing Panjwani Vs. State of*

*Maharashtra*¹, raised a preliminary objection to the entertainment of this petition on the grounds of alternate remedy by way of a second Revision Application before the State Government. For the order, which is proposed to be made and in peculiar facts and circumstances of the present case, there is no necessity to relegate the petitioners to the alternate remedy by way of second Revision Application. By order made in connected Writ Petition No.2871 of 2014, the impugned orders, being common, have been set aside and the matter remanded to the Additional Commissioner, Konkan Division, Mumbai, for fresh adjudication on merits. For reasons referred to hereafter, there is necessity to adopt a similar course of action in this petition as well. Accordingly, no useful purpose will be served by requiring the petitioners to avail an alternate remedy by way of second Revision Application.

4] In this case, as against Mutation Entry effected on 29 April 2008 (No.17042), the petitioners instituted an Appeal before the Sub-Divisional Officer (SDO), which was allowed. The contesting respondents carried the matter in Appeal before the Deputy Collector, which Appeal was dismissed. The contesting respondents, thereafter carried the matter in Revision Application before the Additional Commissioner, which has allowed the Revision

1 Letters Patent Appeal No.55 of 2003 in Writ Petition No.7477 of 2002 decided on 13 July 2005

Application by the order impugned in this petition. The Review Petition instituted by the petitioners has been dismissed by the Additional Commissioner, Konkan Division, Mumbai.

5] The records would indicate that the petitioners' case with regard to breach in compliance with the principles of natural justice as also prescribed procedures in the matter of effecting Mutation Entry on 29 April 2008 has been accepted by the SDO and Deputy Collector, exercising appellate jurisdiction. If the impugned orders are perused, there is hardly any discussion on the aspect of non-compliance with the principles of natural justice and prescribed procedures in the matter of effecting Mutation Entry on 29 April 2008. In the facts and circumstances of the present case, this was vital because it is one of the main ground urged by the petitioners and further this ground was accepted by both the SDO and Deputy Collector exercising appellate jurisdiction. On this short ground, the impugned orders are liable to be set aside.

6] Accordingly, the impugned orders are set aside. The petitioners' Revision Application is restored to the file of Additional Commissioner, Konkan Division, Mumbai for fresh decision on merits and in accordance with law.

7] The Additional Commissioner, Konkan Division, Mumbai is directed to dispose of the Revision Application within a period of one year from today.

8] For the said purpose, the parties to appear before the Additional Commissioner, Konkan Division, on 5 March 2015 at 11.00 a.m., alongwith an authenticated copy of this order.

9] The Additional Commissioner is directed to take up the Revision Application remanded by this order alongwith the second Revision Application instituted by the petitioners in Writ Petition No.2781 of 2014.

10] It is made clear that this Court has not expressed any opinion on the merits of the matter. All issues and contentions of both the parties are specifically kept open.

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

12] All parties to act upon an authenticated copy of this order.

(M. S. SONAK, J.)