

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.739 OF 2013

Bibizar Shaikh Farid & ors.	...	...Petitioners
v/s.		
The Sub-Divisional Officer, Mumbai Suburban District & ors.		...Respondents
...		
Mr.R.Narula i/b Jhangani, Narula & Associates for the Petitioners.		
Mr.J.S.Saluja, AGP for the State.		

...
CORAM : A.A. SAYED, J.
DATED : 17 MARCH 2015

P.C.:

The challenge in this Petition under Article 226 of the Constitution is to the six identical orders dated 29 May 2012 passed by the Respondent No.1-Sub-Divisional Officer, Mumbai Suburban District. The operative part of one of the impugned order reads as under:

"ORDER

"This office order bearing No.DLN/RTS/A-22/2010 dated 9/5/2012 is hereby stayed till the clearance from the concerned authorities are received."

2. It is an admitted position that aforesaid impugned orders were passed in six Appeals which Appeals were already disposed of by passing separate identical orders dated 9 May 2012, the operative part of one of the order reads as follows:

“ORDER

- 1) *The appeal of the appellant is allowed.*
- 2) *The land admeasuring 3 Acres 20 Gunthas comprises in S.No.42/A of village- Poisar is hereby deletd from M.E.No.687 dated 24/5/2009. Tahsildar, Borivali is directed to mutata a fresh mutation entry to that effect on the basis of letter dated 16/7/2010 issued by the Chief Conservator of Forest, Borivali.*
- 3) *No order as to costs.*
- 4) *The decision be informed to both the parties accordingly.*

3. During the pendency of the present Petition, (which impugns the six orders dated 29 May 2012 granting stay) six Revision Applications were filed at the instance of the Sub Divisional Officer seeking to revise the orders dated 9 May 2012.

4. Learned Counsel for the Petitioners and the learned AGP have now placed on record copy of one of the six orders dated 9 February 2015 passed by the Deputy Collector (Appeals), Mumbai Suburban District, in one of the six Revision Applications. By the said orders dated 9 February 2015, the six Revision Applications filed at the instance of Sub Divisional Officer, have been dismissed and it has been held that the Revision

Applications are misconceived and contrary to law and the proceedings have been dropped. Para 2 of the said order, records as follows:

“The Sub-Divisional Officer after passing the said orders dated 9th May 2012 curiously stayed the implementation of the same by passing order dated 29th May 2012. Thereafter, Sub-Divisional Officer by and under his letter dated 30th April 2014 bearing reference No.DLN/MWS/T-1/WS-89/2014, Dated-30/04/2014 letter addressed to this office requested for initiating Revision proceedings against the said orders dated 9th May 2012 passed in the above mentioned six Appeals by him. I am informed that the abovementioned Appellants have also filed a Writ Petition No.793 of 2013 in the Hon'ble High Court against the order of stay dated 29th May 2014 passed by Sub-Divisional Officer and the Hon'ble High Court has already stayed the said order dated 29th May 2012.”

5. It is thus an admitted position that the impugned orders have been passed in Appeals, which Appeals had already been disposed of earlier. Moreover, it is not in dispute that while passing the impugned orders the Petitioners were not granted an opportunity of being heard. There was thus a clear violation of principles of natural justice. The Revision Applications, which were filed at the instance of the Sub-Divisional Officer also now stand dismissed in view of the orders dated 9 February 2015 passed by the Deputy Collector (Appeals), Mumbai Suburban District.

6. In these circumstances, the impugned orders dated 29 May 2013 are set aside on the ground of violation of principles of natural justice and also on the ground that the impugned orders have been passed in Appeals, which were already disposed of earlier and the Respondent No.1 had no power to review its own orders. Moreover, as discussed earlier, even the six Revision Applications which have been filed against the orders dated 9 May 2012 in six Appeals now stand disposed of. It is pertinent to note that in the Affidavit dated 2 May 2014 filed by the Asst. Conservator of Forest in this Petition, it has been categorically stated that the subject land is not a forest land.

7. For the aforesaid reasons, the Petition deserves to be allowed and is accordingly allowed. Rule is made absolute in terms of prayer clauses (a) & (b) of the Petition which read thus:

“(a) *That this Hon'ble Court be pleased to issue a Writ, Order or direction quashing or setting aside the said Order dated 29th May 2012 (Exhibit Q-1 to Q-6 hereto).*

(b) *For a Writ, Order or direction commanding the Respondent to give effect to the Order dated 9th May 2012 in the Revenue and City Survey Records.”*

8. At the request of learned AGP, it is directed that this order shall not be enforced for a period of eight weeks from today.

(A.A. SAYED, J.)

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