

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.4093 OF 2014

(Dhananjay Chandrakrushna Mahajan and another vs. Collector, Akola and others)

Office Notes, Office Memoranda of
Coram, appearances, Court's orders Court's or Judge's orders
or directions and Registrar's orders.

Shri A.S. Mehadia, Advocate for petitioners.

Smt. B.P. Maldhure, Assistant Government Pleader
for respondent nos.1 and 3 to 6.

Shri G.A. Kunte, Advocate for respondent no.2.

CORAM : B.P. DHARMADHIKARI AND
 P.N. DESHMUKH, JJ.

DATED : OCTOBER 5, 2015

The petitioners before this Court attempt to demonstrate that because of ex parte exercise of powers by District Superintendent of Land Records, Akola on 2/6/2011, their rights are infringed. They submit that under the guise of correcting error, respondent no.2 is seeking enhancement of area from 12 acres 14 gunthas to 21 acres 21 gunthas and addition of his name to the entire area.

Adv. Mehadia appearing for petitioners

submits that while issuing such directions, some measurements allegedly carried out at the instance of respondent no.2, but behind back of petitioners, have also been relied upon.

Adv. Kunte appearing for respondent no.2 is strongly opposing the petition. According to him, the recommendation as such is not decisive and the issue can be looked into independently by respondent no.5 Sub-Divisional Officer before whom matter is going on. He points out that on about 38 dates, respondent no.5 has looked into the matter and petitioners have avoided to appear. According to him, matter is now closed for orders by the said Authority. He further submits that as recommendation is only in administrative capacity, it does not violate any of the legal rights of petitioners. Hence, same cannot be assailed.

Adv. Kunte is relying upon judgment of the Apex Court in **State of Orissa and others vs. Mesco Steels Limited and another** {(2013) 4 SCC 340} and **Dr. G. Sarana vs. University of Lucknow and others** {(1976) 3 SCC 585} to urge

that challenge is premature.

Smt. Maldhure, learned Assistant Government Pleader supports the arguments of Adv. Kunte. She submits that if ultimately order of Sub-Divisional Officer is against the petitioners, the petitioners can challenge it before the competent Authority in accordance with scheme of Maharashtra Land Revenue Code.

After hearing respective Counsel, we find that grievance made by respondent no.2 on 7/11/2005 has been looked into by respondent no.3 and recommendation (as alleged) has been issued on 2/6/2011. The recommendation is for correction of area as also addition of name of respondent no.2 in revenue records. The recommendation also mentions certain other measurements, which have been carried out and on the basis of those measurements, recommendation has been made.

In this situation, it is apparent that recommendation is not at all only an administrative direction, it is by superior Authority. The recommendation itself states that certain land has been recorded in the name of Railway and name of

respondent no.2 needed to be added against it. In relation to other land, i.e. Survey No.11, it is mentioned that as per possession of respondent no.2, its area needed correction. In relation to Survey No.11/1, again due to finding of possession of respondent no.2, a conclusion that the correction is necessary has been recorded. Thus, a superior Authority, after application of mind to facts, has recorded certain findings and then sent matter back to Sub-Divisional Officer. It is, therefore, obvious that it is not a simple recommendation leaving Sub-Divisional Officer free to reach appropriate decision.

The respondent no.2 appears to have made a grievance way back on 7/11/2005. Its cognizance appears to have been taken after almost six years. In this situation, we find it fit to direct petitioners as also respondent no.2 to appear before respondent no.3 on 26/10/2015 for further consideration.

Adv. Mehadia points out that powers under Sections 106 and 135 of Maharashtra Land Revenue Code vest with Collector. The learned Counsel for respondent no.2 also does not dispute

this fact. Respective Counsel, therefore, state that if powers under Sections 106 and 135 of the Maharashtra Land Revenue Code are to be exercised, matter must be looked into by Collector, Akola. Here it is obvious that the impugned directions are issued by an incompetent Authority and are, therefore, without jurisdiction. Hence, it is unnecessary to refer to the judgments of Hon'ble Apex Court cited supra. We, therefore, direct parties to appear before respondent no.1 Collector, Akola on 26/10/2015. The Collector shall after hearing parties, take suitable decision on grievance of respondent no.2 within next two months. Needless to mention that conclusions and findings recorded in the impugned communication dated 2/6/2011 shall not influence respondent no.1 in any way.

With above directions and keeping all other rival contentions open, we dispose of the petition. No costs.

JUDGE

JUDGE

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