

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

WRIT PETITION NO. 4324 OF 2013

(Jagdish s/o Gokuldas Punjabi & Ors. vs. State of Maharashtra thr. Principal Chief Secretary & Ors.)

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

Court's or Judge's orders

**CORAM : B.P. DHARMADHIKARI &
A.P. BHANGALE, JJ.
FEBRUARY 13, 2015.**

Heard Shri Khajanchi with Shri Dhatrak,
learned counsel for the petitioners and Mrs. Joshi,
learned AGP for the respondents.

Perused the reply affidavit.

The question is whether headquarter of a
Revenue Sub-division in Yavatmal district should be at
Ghatanji or at Arni. It is not in dispute that following
the prescribed procedure, the objections were invited.
The petitioners raised their objection. They approached
this Court in Writ Petition No. 4714 of 2012 and that
writ petition was disposed of on 01.10.2012 by following
judgment:

*“1. Rule. Rule returnable forthwith. Heard
finally by consent of the parties.*

*2. Having heard the matter, we are of the view
that the petitioners' representation should be considered
before taking any final decision regarding location of the
place of the Sub Divisional Officer. The petitioner shall*

appear before the authority on 08.10.2012. The decision shall be taken within a period of two weeks, thereafter.

3. *Rule made absolute in the above terms. No order as to costs.*

Authenticated copy of the order be supplied to the learned counsel for the parties.”

Thus, the Division Bench expressed that the petitioners' representation needed to be considered before taking any decision regarding location and petitioners were directed to appear before the authority on 08.10.2012. These directions show that the petitioners were supposed to appear before the authority competent to take suitable decision on location of Sub Division Office. The petitioners appeared before the Divisional Commissioner at Amravati. The said officer has submitted his report dated 17.10.2012 to the State Government. In the report, he has mentioned that the Objectors appeared through their Advocates and they were heard. He also mentioned that the Objectors and their Advocates supported their demand for having revenue Sub Division at Ghatanji. Thereafter the impugned decision has been taken on 26.07.2013 by the State Government. The Revenue Headquarter of Sub-division had been provided at Arni.

The petitioners submit that the report forwarded by the Divisional Commissioner is nothing but

only narration of facts. It is not showing any application of mind in his report to the hearing conducted and as such, the purpose of appearance of the petitioners before the authority as envisaged by this Court in its order dated 01.10.2012 has been defeated. It is further argued that the Divisional Commissioner along with said communication enclosed only two documents i.e. copy of High Court order dated 01.10.2012 and apology allegedly tendered by some of the objectors. Thus, even objections raised by the petitioners were not forwarded to the State Government.

The learned AGP is disputing this. She submits that the question whether the objections of the petitioners were forwarded or not is a question of fact which should have been raised specifically in writ petition. As there is no such plea, such a contention cannot be allowed to be raised. She also points out that in connected matters, the Secretary of State Government has filed an affidavit pointing out receipt of such objections, suggestions and its consideration. The judgment delivered by this Court in Public Interest Litigation No. 72 of 2013 on 10.12.2014 is relied upon to urge that no opportunity of hearing as such is contemplated and the authority is duty bound only to consider the objections.

Here, the judgment in Writ Petition No. 4714 of 2012 (supra) has attained finality. The petitioners representation needed to be considered before taking

any final decision regarding location and for that purpose the petitioners were directed to appear before the authority. We find that said appearance and hearing, therefore, ought to have been before the Competent Authority to take decision. That obviously has not taken place.

Similarly, even if we presume that the petitioners appearance before the Divisional Commissioner was before the Competent Authority, inasmuch as in Writ Petition No. 4716 of 2012, Respondent No. 1 – State of Maharashtra was impleaded through the Divisional Commissioner, Amravati, still the said authority has not submitted any report or record of its views on personal hearing extended to the petitioners. The opportunity of hearing has been undisputedly granted and as such, the said authority ought to have recorded a finding either way and sent it for perusal of and use of State Government, that has not been done.

In this situation, we find the impugned notification dated 26.07.2013 to the extent it deals with Revenue Sub-division in Yavatmal district i.e. Arni or Ghatanji, unsustainable. It is, therefore, quashed and set aside. If the Divisional Commissioner, who has heard the petitioners on 08.10.2012 is still in the office, it is open to him to show his application of mind to the hearing extended to the petitioners on 08.10.2012 and to submit appropriate report in that respect to the State

Government for its consideration. If the same incumbent is not available or then even otherwise, it is open to grant similar opportunity to the petitioners again in the matter and to record findings.

We direct the petitioners to appear before the authority for that purpose on 09.03.2015. The said authority shall after hearing the petitioners submit necessary report afresh within a further period of three weeks. It shall be open to the State Government to take appropriate decision on the location of revenue sub-division thereafter in accordance with law.

It is made clear that the petitioners shall be extended an opportunity of hearing by the Divisional Commissioner, Amravati, as they have been heard earlier also by the very same authority as per orders obtained by them in Writ Petition No. 4714 of 2012. Grievance that the petitioners needed to be heard by the State Government shall not be entertained in the matter.

With these directions, writ petition is partly allowed and disposed of. No order as to costs.

JUDGE

JUDGE

*GS.