

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1351 OF 2015

Manikchand S/o Poonamchand Mahatole (Died)
Through L. Rs.,
Shashikala W/o Mamnikchand Mahatole
and others .. Petitioners

Versus

State of Maharashtra and others .. Respondents

Shri Rajiv B. Deshmukh, Advocate for Petitioners.
Shri B. V. Virdhe, A. G. P. for Respondent Nos. 1 to 6.
Shri B. V. Dhage, Advocate for Respondent Nos. 4 to 7.

CORAM : S. V. GANGAPURWALA, J.
DATE : 21ST MARCH, 2016.

PER COURT :-

1. The learned counsel for the petitioners submits that, the Secretary i.e. the Respondent No. 1 has allowed the Revision filed by the respondents in toto without considering scope of the Revision. According to the learned counsel, the respondents prayed for remanding the matter to the Appellate Authority by restoring their appeal. The respondent on the contrary while allowing the Revision also set aside the order passed by the Superintendent of Land Records which was in favour of present petitioners. According to the learned counsel, the same was beyond the jurisdiction of the Revisional Authority.

2. Mr. Dhage, the learned counsel for the respondents submits that the Secretary i.e. the respondent No. 1 had given full fledged hearing to the petitioners and respondents and after having been

convinced that the order passed by the District Superintendent of Land Records is erroneous has set aside both the orders. No error is committed in this regard. The petitioners do not have any right in the writ property. The same was effectively demonstrated before the Respondent No. 1.

3. I have considered the submissions.

4. The prayers made in the appeal reads as under -

“A) The Revision Petition may kindly be allowed;

B) The order passed by the learned Dy. Director of land Record, Aurangabad in City Survey / Orig. Appeal / SR / 57, dated 29.3.2014 in Appeal No. City Survey Appeal / SR / 804/ 2005 may kindly be set aside and quashed. The application filed by the revision petitioners referred above may kindly be allowed and the appeal No. City Survey Appeal / SR / 804 / 2005, dated 7.12.2011 may kindly be restored in its original stage i.e. for hearing and by remanding the matter before the Learned Deputy Director of Land Record, Aurangabad for hearing the appeal on merits.

C) If the delay is cause from 7.12.2011 to 11.10.2013 the same may be condoned as the office of the learned Deputy Director of Land Record, Aurangabad has not communicated the further date of hearing of appeal from 6.9.2011.

D) The record and proceedings of the lower court be called for;

E) Any other suitable relief which deems fit be awarded in favour of the revision petitioners.”

5. Present respondents had in fact moved the Revisional Authority seeking relief to remit the matter to the Appellate Authority as the order is passed in absence of the said persons i.e. the appeal was dismissed in default. Naturally, the parties would confine themselves to the scope of Revision. The appeal of the present respondents was dismissed in default. Aggrieved by the said order the present respondents had filed a Revision with the limited prayer to restore their appeal to its original stage of hearing by remanding the matter. The Revisional Authority naturally exceeded its authority. If, the Revisional Authority was satisfied for the reasons stated by the present respondents then the Revisional Authority could have restored the appeal.

6. I have considered the reasons stated by the present respondents for their non appearance before the Appellate Authority. It is their contention that no dates were communicated to them by the office of the respondent i.e. Appellate Authority. The date was fixed on 8.8.2011. On the said date it is stated that Deputy Director of Land Records was busy in administrative work. On the said date the present respondents and the petitioners were present but the appeal was not heard. The further dates were fixed in the absence of the present respondents. Fact remains that the appeal came to be dismissed in default. Considering the reasons given, it would be appropriate to restore the appeal filed by the present respondents.

7. Considering the above, I pass the following order -

ORDER

I] The impugned order passed by the Respondent No. 1 dated 20.12.2014 is quashed and set aside in part.

II] The order to the effect setting aside the order passed by the District Superintendent of Land Records, Aurangabad dated 21.05.2005 is quashed and set aside.

III] The order of the Deputy Director of Land Records in Appeal No. 804 of 2005 dismissing the appeal in default is also quashed and set aside.

IV] The Appeal No. 804 of 2005 before the Deputy Director of Land Records, Aurangabad is restored to its original position.

V] The parties shall appear before the Deputy Director of Land Records, Aurangabad on 11th April, 2016. The Deputy Director of Land Records, Aurangabad shall after hearing the parties decide the said appeal afresh.

8. The writ petition is accordingly disposed of. No costs.

[S. V. GANGAPURWALA, J.]