

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 694 OF 2008

Hemraj Arjun Patil,
Age 65 years, Occ. Agriculture,
R/o Sangvi, Tq. Pachora,
District Jalgaon.

..Petitioner

Versus

Smt. Kokilabai Shivaji Patil,
Age 47 years, Occ. Pensioner,
R/o Sangvi, Tq. Pachora,
District Jalgaon.

..Respondent

**AND
CIVIL APPLICATION NO. 623 OF 2016**

Hemraj Arjun Patil,
Age 65 years, Occ. Agriculture,
R/o Sangvi, Tq. Pachora,
District Jalgaon.

..Petitioner

Versus

1. Smt. Kokilabai Shivaji Patil,
Age 55 years, Occ. Pensioner,
R/o Sangvi, Tq. Pachora,
District Jalgaon.

2. Circle Officer,
Varkhedi Division No.4,
Tq. Pachroa, Dist. Jalgaon.

3. The Talathi,
Sangvi, Tq. Pachora,
District Jalgaon.

4. The Tahsildar,
Pachora, Dist. Jalgaon.

5. The Sub Divisional Officer,
Pachora, Division Pachora,
District Jalgaon.

..Respondent

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Advocate for Petitioner / Applicant : Shri Uday S.Malte
Advocate for Original Respondent 1 : Shri Kulkarni S.S.
AGP for Respondents 2 to 5 in Application : Shri Badakh V.S.

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CORAM : RAVINDRA V. GHUGE, J.

Dated: January 22, 2016

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ORAL JUDGMENT:-

1. The applicant, in fact, had moved the Civil Application for urgent orders today. Learned Advocate for the applicant / petitioner and the learned Advocates for the non-applicants / respondents have graciously submitted that they have no objection if this Court hears this petition itself, which was admitted on 31.1.2008.

2. Shri Malte has raised a serious grievance about the conduct of respondent No.2 Circle Officer as well as respondent No.1. He submits that the impugned order dated 12.1.2016 would indicate that the Circle Officer has blatantly violated the interim order passed by this Court, while admitting the petition, dated 31.1.2008. Prayer clause (E) was granted by this Court which has not been vacated. Yet the order dated 12.1.2016 is passed. Reference is given to the order passed by this Court dated 28.1.2008. Shri Malte submits that no such order was passed on 28.1.2008, since the petition was lodged on 29.1.2008 and the Court had granted ad-interim relief on 31.1.2008.

3. Respondent No.2 - Circle Officer Shri Ajay Prabhakar Kulkarni has passed the impugned order. It appears that he has not shown due diligence in verifying whether any order of the nature referred to in the impugned order dated 12.1.2016 has been passed by this Court on 28.1.2008. There is no other reference to any order passed by this Court, except order dated 28.1.2008.

4. Learned AGP submits that the order passed by this Court, dated 5.8.2011 seems to have been mis-understood by Shri Ajay Prabhakar Kulkarni. I find this explanation to be unsatisfactory. There is no reference of the order dated 5.8.2011 by which the petitioner was directed to remove office objections within a period of eight weeks, failing which the petition was to be dismissed. Office objections were removed by the applicant / petitioner within time. It, therefore, appears that Shri Ajay Prabhakar Kulkarni has acted negligently. I am not going into the allegations made by Shri Malte, learned Advocate that he has acted hands in gloves with respondent No.1 and his prayer for costs.

5. Shri Kulkarni, learned Advocate for respondent No.1 submits that she may have mis-understood the order of this Court, dated 5.8.2011 and has erroneously presumed that the petition has been dismissed. She is a villager and does not have adequate knowledge about the procedure of this Court. She did not take any instructions from her lawyer and may have represented to respondent No.2 Shri Kulkarni that the petition has

been dismissed by order dated 5.8.2011.

6. Civil Application is, therefore, allowed. Notice dated 12.1.2016 is quashed and set aside.

7. The petitioner / applicant has stated in paragraph No.5 of the petition that since the Maharashtra Revenue Tribunal is not in existence and the act in that respect had not come in force, the petitioner had filed this writ petition as other efficacious remedy was not available.

8. Learned Advocate Shri Kulkarni submits that now the Maharashtra Revenue Tribunal is available. The order No. 64/3/2005, passed by the Tahsildar, Pachora and the judgment and order dated 18.12.2009 passed by the Sub Divisional Officer, Pachora in RTS Appeal No.41 of 2007, can be assailed before the learned Maharashtra Revenue Tribunal.

9. Shri Malte submits that the petitioner has been protected by the order of this Court dated 31.1.2008. Same order is in force for the last eight years. By keeping all contentions of the litigating sides open, the petitioner may exhaust the remedy of approaching the learned Maharashtra Revenue Tribunal. However, the contention that the Maharashtra Revenue Tribunal may not have jurisdiction should also be kept open. He submits that the protection granted by this Court can be continued till the decision of the learned Maharashtra Revenue Tribunal on

the appeal that the petitioner may file.

10. Shri Kulkarni, learned Advocate and the learned AGP submits that the interim relief granted by this Court need not be continued, could be vacated and the appeal of the petitioner can be decided on its own merits.

11. I have considered the submissions of the learned Advocates.

12. The interim protection of this Court is in force for the last eight years. Ends of justice would be made and no prejudice would be caused to the respondents if the said protection is continued till the decision of the learned Maharashtra Revenue Tribunal in the appeal, provided the petitioner files the said appeal within six weeks from today.

13. In the light of the above, this petition is partly allowed. The ad-interim protection granted by this Court dated 31.1.2008 shall continue, till the learned Maharashtra Revenue Tribunal decides the appeal of the petition, if filed within six weeks from today. If such an appeal is filed, the learned Maharashtra Revenue Tribunal shall decide the said appeal on/or before 30.11.2016. All the contentions of the litigating sides are kept open. If the petitioner fails to file his appeal as permitted, the protection dated 31.1.2008 shall stand vacated.

14. Rule is made partly absolute in the above terms.

15. Learned AGP shall communicate this order to the non-applicants / respondents 2 to 5 and Shri Kulkarni, learned Advocate shall communicate this order to the non-applicant / original sole respondent.

(RAVINDRA V. GHUGE, J.)

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