

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4249 OF 2015

Vasant Kisan Bankar & Ors.	..	Petitioners
VS.		
Dinkar Shripati Bhujbal & Anr.	..	Respondents

Mr. Ashok B. Tajane for Petitioners.
Mr. Rahul S. Kadam for Respondent No. 1.
Mr. A. R. Metkari – AGP for Respondent No. 2.

CORAM : M. S. SONAK, J.
DATE: 18 OCTOBER 2016

P.C :

- 1] Rule. With the consent of and at the request of the learned counsel for the parties, Rule is made returnable forthwith.
- 2] The challenge in this petition is to the order dated 31 October 2014 made by the Sub Divisional Officer acting as Revisional Authority under the Mamlatdars Court Act, 1906 (said Act).
- 3] Mr. Tajane, learned counsel for the petitioners submits that Mamlatdar by his order dated 21 January 2013 had in fact, allowed the petitioners application and directed the respondents to remove obstructions upon the road. He submits that the Revisional Authority, has dismissed the revision application instituted by the respondent but at the same time, also set aside the Mamlatdar's

order dated 21 January 2013. He submits that once the Revisional Authority was satisfied that the revision deserves to be dismissed, there was no question of setting aside the Mamlatdar's order dated 21 January 2013. On this ground alone, Mr. Tajane submits that the impugned order is liable to be set aside.

4] On the other hand, Mr. Kadam, learned counsel for respondent no. 1 submits that if the impugned order is perused and read in its entirety, it is quite clear that the revision application has in fact been allowed. The statement in the operative portion to the effect that the revision application is dismissed is only, an error of expression, particularly since the same is followed by the direction for setting aside the Mamlatdar's order dated 21 January 2013.

5] With the assistance of the learned counsel for the parties, I have perused the impugned order. Upon perusal of the same, I am satisfied that the Revisional Authority was convinced that the Mamlatdar's order dated 21 January 2013 was required to be set aside but at the same time, the petitioners were required to be afforded an opportunity of making good their case. The Revisional Authority has also recorded that there was lack of certain procedural compliances on the part of the Mamlatdar. For example, the Revisional Authority has recorded that the Mamlatdar failed to

make a site inspection. The Revisional Authority has also pointed out that the petitioners were required to plead and establish the existence of a road and thereafter, establish that the same was obstructed. Therefore, upon reading of the impugned order in its entirety, it is clear that the Revisional Authority has allowed the revision application of the respondent no. 1 only partly, thereby, setting aside the impugned order requiring the Mamlatdar, on remand to consider the petitioners case afresh and in accordance with law.

6] Accordingly, this petition can be disposed of with a clarification that the Mamlatdar's order dated 21 January 2013 stands set aside but the petitioners application dated 21 January 2013 stands restored to the file of the Mamlatdar, Purander, who is required to decide the same in accordance with law and on its own merits expeditiously.

7] Mr. Tajane, learned counsel for the petitioners submits that the petitioners should be afforded opportunity to amend the application before the Mamlatdar. This request is opposed by Mr. Kadam. At this stage, all that can be said is that the petitioners shall have the liberty to apply for amendment before the Mamlatdar. The respondent shall also have the liberty of filing his response

opposing such plea for amendment. The Mamlatdar to decide the application for amendment on its own merits in accordance with law.

8] The parties to appear before the Mamlatdar on 21 November 2016 at 11 a.m. and produce authenticated copy of this order.

9] It is made clear that this Court has not examined the rival contentions on merits and therefore, all contentions of all parties are left open for the determination by the Mamlatdar in pursuance of this remand order.

10] All concerned to act on basis of authenticated copy of this order.

(M. S. SONAK, J.)

Chandka