

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1330 OF 2017

1. Uddhavsingh Sahebsingh Pawar,
Age 50 years, Occ. Agriculture
R/o Ghugarde Hadgaon, Taluka
Ambad, District Jalna.

2. Janardhansingh Bhagujisingh Pawar,
Age 61 years, Occ. Agriculture
R/o Ghugarde Hadgaon, Taluka
Ambad, District Jalna.

..Petitioners

Versus

1. The State of Maharashtra
Through the Collector, Jalna.

2. The Tahsildar-cum-Mamlatdar,
Ambad, Dist. Jalna.

3. Badalsingh Narayansingh Pawar,
Age 47 years, Occ. Agriculture
R/o Ghugarde Hadgaon, Taluka
Ambad, District Jalna.

..Respondents

...
Advocate for Petitioners : Dr. Tawshikar Swapnil D.
AGP for Respondents 1 & 2 : Shri Bhagat N.T.
Advocate for Respondent 3 : Shri Salunke Sudarshan J.

...

CORAM : RAVINDRA V. GHUGE, J.
Dated: September 14, 2017

...

ORAL JUDGMENT :-

1. Heard learned Advocates for the respective parties.

2. Rule.

3. By consent, Rule is made returnable forthwith and the petition is taken up for final disposal.

4. The petitioners are aggrieved by the order dated 29.12.2016, by which, the Mamlatdar has decided the case under Section 5(2) of the Mamlatdar Cours Act, 1906, initiated by respondent No.3 - Badalsingh and has directed that the obstruction on a particular way should be removed and the said way, said to be existing for years, should be made available for the residents of the village.

5. I have considered the strenuous submissions of the learned Advocates for the respective sides and the learned AGP on behalf of the State authorities. With their assistance, I have gone through the record available.

6. Considering the order that I intend to pass, I am not adverting to the entire submissions of the litigating sides.

7. Suffice it to say that these petitioners were earlier before this Court in Writ Petition No.5840 of 2016. By order dated

1.10.2016 this Court permitted the petitioners to withdraw the said petition and lead evidence before the Mamlatdar in the matter under Section 5(2) of the Mamlatdar Courts Act, 1906.

8. The abovesaid matter has taken a curious turn. Whenever the notice was issued by the said Mamlatdar (Tahsildar, Ambad), after remand, some of these petitioners used not to be found in the village. The proceedings initiated by respondent No.3 were stuck since, on two occasions, the notice dated 9.9.2015 and 7.12.2016 could not be served upon two petitioners for the reason that they were not found in the village, when the concerned Bailiff reached the village to serve the notice. The witnesses by name Ambarsingh Parihar and Govind were common witnesses on both the occasions, who have stated that Dnyaneshwar Sahebsingh Pawar with relation to the notice dated 9.9.2015 and petitioner No.1 - Udhawsingh Sahebsingh Pawar in relation to the notice dated 7.12.2016, were not in the village. These are the two persons, who are claiming that they were not aware about the proceedings progressing before the said Mamlatdar.

9. It is not a matter of coincidence that Govardhan Sahebsingh and Sharad Sahebsingh are the real brothers of

Uddhavsingh and the second petitioner Janardhan Bhagusingh were already served with the summons from the Tahsildar. As such, prima facie, it appears that Uddhavsingh claiming to be unserved is a pretense as both his brothers in the same matter were served and it is improbable he did not know about the proceedings. In so far as petitioner No.2 Janardhansingh Bhagusingh is concerned, no document is placed on record to indicate that he was not served.

10. In the above fact situation, the fact that petitioner No.1 had not appeared before the Mamlatdar, despite remand from this Court, this is a fit case for imposing costs on the petitioners, though I am giving them one last opportunity to participate in the proceedings before the Mamlatdar.

11. Learned Advocate for the petitioners fairly states that the petitioners henceforth would not seek adjournments, if they are given one last opportunity and would abide by all the dates of hearing before the Mamlatdar. It is, however, prayed that the ad-interim relief granted by this Court (Coram : S.B.Shukre, J.) on 2.2.2017 may be continued for a limited period during which the Mamlatdar could permit the petitioners to lead evidence in the matter. Though Shri Salunke, learned Advocate opposes the

said request, in order to balance the equities, I would be granting some protection to these petitioners, but by imposing costs for their conduct.

12. This Writ Petition is partly allowed and the proceeding No. Ja.Kr.2015/Jama-1/Kavi-958/CR-7/2015 is remitted back to the Mamlatdar. The petitioners shall deposit costs of Rs.5,000/- each with the Mamlatdar, Ambad within a period of three weeks from today and the said amount shall be withdrawn by respondent No.3 without conditions. If the said amount is not deposited, the impugned order dated 29.12.2016 shall stand restored.

13. Considering the above, the impugned order dated 29.12.2016 is set aside and petitioners Nos. 1 and 2 shall appear before respondent No.2 along with respondent No.3 on 26.9.2017 at 2.00 pm. Formal notices shall not be issued by the Mamlatdar.

14. It is made clear that the liberty to lead evidence is granted only to petitioner Nos.1 and 2, who are before this Court. It is also made clear that petitioner No.1 shall lead evidence first, followed by petitioner No.2 and both shall not seek

adjournments for the said purpose. In the event, an adjournment is sought, the Mamlatdar would be justified in rejecting such application and closing the evidence of the petitioners.

15. The Mamlatdar shall decide the proceedings as expeditiously as possible and in any case on/or before 18.11.2017.

16. Rule is made partly absolute in above terms.

(RAVINDRA V. GHUGE, J.)

...

akl/d