

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.8956 OF 2016

Sonaji s/o Bapurao Kale,
age: 55 years, Occ: Agriculture,
R/o Hatwan, Tq. Mantha,
District Jalna.

Petitioner

Versus

01 Sangita w/o Prabhakar Giram,
age: 35 years, Occ: Sarpanch,
R/o Hatwan, Tq. Mantha,
District Jalna.

02 Prabhakar s/o Achyutrao Gram,
age: 40 years, Occ: Agriculture,
R/o Hatwan, Tq. Mantha, Dist.Jalna.

03 Group Grampanchayat, Hatwan,
Awalgaon, Tq. Mantha, Dist.Jalna,
through its Gramsevak.

04 Tahsildar,
Tahsil Office, Mantha, Dist.Jalna.

05 Circle Revenue Officer,
R/o Hatwan, Tq. Mantha,
District Jalna.

06 Talathi,
Sajja Wanjola, Tq. Mantha,
District Jalna.

07 Executive Engineer,
Dudhna Medium Project,
(Selu, Rehabilitation Department),
Office at Motibagh, Jalna.

Respondents

Mr.P.P.More, advocate for the petitioner
Mr.M.S.Kulkarni, advocate for Respondent No.1.
Mr.A.P.Baraskar, A.G.P. for Respondents No.4, 5 and 6.

CORAM : S.B.SHUKRE, J.

DATE : 02nd February, 2017

ORAL JUDGMENT :

1 Heard. Rule. Rule made returnable forthwith and heard finally by consent of learned Counsel for respective parties.

2 The issue involved in this petition is whether or not Respondents No.1 and 2 are residing in the structure constructed upon plots no.142 and 143 of village Hatwan and if it is seen that they are residing in these plots, which has admittedly not been allotted to anybody else so far, it would only go to prove that there is substance in the objection taken by the petitioner. But, in order to find out answer to this question, it would be necessary for the authorities to conduct proper inquiry into the matter.

3 On going through the orders dated 07.07.2016, passed by the Additional Commissioner as well as Additional Collector, Jalna, dated 17.01.2016, I find that no proper inquiry has been made by either of these authorities for reaching a just and proper conclusion based upon the facts of the case. The learned Additional Collector has accepted the report of the Deputy Engineer while considering report of the *Talathi* and the learned Additional Commissioner has accepted the report of the *Talathi* while rejecting report of the Deputy Engineer. In fact, both these reports suffer from material defects, in the sense that they are based upon *panchanamas* prepared in the absence of either petitioners and Respondents No.1 and 2. Therefore, neither of the

authorities could have placed reliance upon any of these reports, but they have done so, which is against settled principles of justice. There are ration cards placed on record by the contesting parties. I am of the view that apart from the ration cards, something more is required to be considered by the authorities so as to record appropriate findings in respect of facts of the case. Therefore, the contesting parties would have also to be given liberty to place on record additional documents, if any, in support of their respective contentions. I, therefore, find that the impugned order passed by the learned Additional Commissioner as well as order passed by the learned Additional Collector cannot be sustained in the eye of law.

4 In the result, writ petition is allowed. The impugned order of the learned Additional Commissioner as well as order of the learned Additional Collector are quashed and set aside. The matter is remanded back to the learned Additional Collector, Jalna, for fresh inquiry into the matter. Liberty is given to either of the parties to place on record additional documents, if any. All contentious issues are kept open to be considered by the learned Additional Collector. The decision shall be taken within one month from the date of appearance of parties before the learned Additional Collector.

5 Rule is made absolute in above terms. No costs.

S.B.SHUKRE
JUDGE