

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

907 WRIT PETITION NO. 10429 OF 2016

BARA IMAM MASJID TRUST THRO ITS TRUSTEES SHAIKH
NOOR MOHAMMAD SHAIKH SHAFI AND OT
VERSUS
THE STATE OF MAHARASHTRA THRO FOREST AND REVENUE
MINISTRY MUMBAI AND OTHERS

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Adv.for Petitioners : Mr. Shaikh Mazhar A.
Jahagirdar

Mr. NT Bhagat, AGP for Respondents: 1 to 3;
Mr. Shah J.R., Adv. For R/4 To 6.

CORAM : P.R.BORA, J.

DATE : 5th April, 2017.

PER COURT :

1) Heard. By filing the present petition, the petitioner has challenged the order passed by the Sub Divisional Officer, Ahmednagar in RTS Appeal No. 1247/2016 decided on 2nd September, 2016. When the matter was taken up for hearing, Shri J.R.Shah, learned Counsel appearing for Respondent Nos. 4 to 6, raised a preliminary objection about the maintainability of the petition, submitting that alternate efficacious remedy is available for the petitioner to file a

revision application under Section 76 of the Maharashtra Tenancy and Agricultural Lands Act.

2) Shri Shaikh, learned Counsel appearing for the petitioner, submitted that the petition is very well maintainable before this Court since the impugned order has been passed without giving any opportunity of hearing to the present petitioner and in utter disregard of the principles of natural justice. The learned Counsel relied upon the judgment of the Hon'ble Apex Court in the case of Satwati Deswal Vs. State of Haryana and Ors. -(2010) 1 SCC 126. The learned Counsel also placed on record the order dated 2nd February, 2017 passed by this Court (Coram: S.B.Shukre,J.) in Writ Petition No.1330/2017, wherein, relying upon the judgment of the Hon'ble Apex Court in Satwati's case (cited supra), the petition was held maintainable.

3) On perusal of the impugned order, it

appears to me that the learned Sub Divisional Officer, without giving any opportunity of hearing to the petitioner or even issuing notices to the respondents, has passed the impugned order.

4) Learned Counsel Shri Shah does not dispute that notice was not issued to the respondents before passing the aforesaid order. It appears to me that opportunity of hearing must have been given by the Sub Divisional Officer to the petitioner and only thereafter the order could have been passed by him. It further appears to me that, if the notices would have been issued, the respondents would also have an opportunity to put forth their case and to raise all the objections including as regards to the maintainability of the application so filed by the present petitioner before the Sub Divisional Officer. However, even that opportunity does not seem to have been given. As such, the order cannot be sustained. The impugned order,

therefore, is quashed and set aside and the matter is remitted back to the learned Sub Divisional Officer, Ahmednagar with a direction to hear it afresh by giving appropriate opportunity to the petitioner as well as to the respondents. It is clarified that this Court has not expressed any opinion as about the merits of the matter and all the issues, including that of maintainability of the application so filed by the present petitioner before the Sub Divisional officer, are kept open.

5) With the observations, as above, the writ petition stands disposed of.

(P.R.BORA,J.)

bdv/