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

**WRIT PETITION NO. 13770 OF 2017**

RAMESH RAMCHANDRA ATTARDE AND OTHERS
VERSUS
SURESH RAMCHANDRA KULKARNI AND ANOTHER
...
Advocate for Petitioners : Mr Waramaa B.R.
Advocate for Respondent 1 : Mr Bhapkar S.B.
Mr N T Bhagat AGP for Respondent No.2.
...
**CORAM : V.K. JADHAV, J.**
**Dated: November 27, 2017**
...

**PER COURT** :-

1. By order dated 6.6.2017 in Writ Petition No.3514 of 2014 this Court has remitted the matter back to Maharashtra Revenue Tribunal, Aurangabad with the directions to decide the case as expeditiously as possible and preferably on or before 15.9.2017. This court has also directed the parties to appear before the Tribunal on 7.7.2017.

2. Learned counsel appearing for the petitioners submits that, on 7.7.2017 Maharashtra Revenue Tribunal, Aurangabad has not received the Writ and, as such, matter was not taken on board. Consequently,

the petitioners could not appear before the Tribunal as directed by this Court, however, it appears from the note prepared by the Deputy Registrar of Maharashtra Revenue Tribunal, Aurangabad that present respondents alongwith his counsel filed an application for taking the file on board, however, for want of Writ from the High Court, Deputy Registrar of Maharashtra Revenue Tribunal, Aurangabad given next date i.e. 28.7.2017 with the specific note that 'R & P' are not yet received from the High Court. Learned counsel for the petitioners submits that, the Tribunal has not given notice to the present petitioners about next date. Consequently, learned Member of the Maharashtra Revenue Tribunal, Aurangabad has heard the matter and, again remitted it to Tahsildar without giving an opportunity of being heard to the present petitioners.

3. Learned counsel for the petitioners further submits that, in paragraph no.7 of the impugned judgment and order, the learned Member of Maharashtra Revenue Tribunal, Aurangabad has

directed the lower authority to consider the application on the basis of the interpretation drawn in the order itself, leaving no scope for the petitioners to put up their case before the Tahsildar in a different manner by interpreting the provisions of Section 3 of the Maharashtra Irrigation Act, 1976.

4. Learned counsel for respondents submits that, on 7.7.2017 respondents alongwith his counsel appeared before the Deputy Registrar, Maharashtra Revenue Tribunal, Aurangabad and filed an application and Vakalatnama for taking the file on board. However, the Deputy Registrar, Maharashtra Revenue Tribunal, Aurangabad, has given next date on the ground that 'R & P' not received. Learned counsel submits that, there after two dates are given, however, on those dates, petitioners did not appear before the Tribunal. Learned counsel submits that, the petitioners are playing tactics to protract the litigation. Even, this Court has directed the petitioners and the respondents to appear before the Tribunal on certain date, however, the petitioners

neither appeared before the Tribunal nor bothered about the subsequent proceedings in the said matter when this court has specifically directed the Tribunal to dispose off the case in time bound manner.

5. It appears that, though, this Court has given specific directions to the parties to appear before the Maharashtra Revenue Tribunal, Aurangabad on a specific date, the petitioners as it appears from the record did not appear before the Tribunal. However, it also appears from the record, that for want of record and proceedings, Deputy Registrar Maharashtra Revenue Tribunal, Aurangabad has given next date as 28.7.2017. Even, thereafter, matter was posted twice for hearing. It further appears from the record that so far as date 28.7.2017 and subsequent dates are concerned, petitioners had no notice about the said dates. It is true that, it was the duty of the petitioners to make an inquiry with the Deputy Registrar, Maharashtra Revenue Tribunal, Aurangabad about the matter when this Court has directed the disposal of the case in

expeditious manner on or before 15.9.2017. However, it also appears that the Tribunal has decided the matter without giving an opportunity of being heard to the petitioners. Further, the Tribunal has also directed the Tahsildar to interpret the provisions in a particular way without leaving any scope to the present petitioners to put up their case. Even though in paragraph no.8 of the order as pointed out by the learned counsel appearing for respondents, Tribunal has kept all the contentions of the litigants open, in view of the observations made in paragraph no.7, the Tahsildar is bound to consider the application on the basis of the interpretation as drawn by the learned Member of the Maharashtra Revenue Tribunal, Aurangabad.

6. In view of the above, I find it essential to give one more opportunity to the petitioners to appear before the Tribunal and canvass all the points open to him in the said proceedings. Since, this is a second incident of remand, I am constrained to direct the order of remand with certain conditions. Hence, order.

**O R D E R**

1. Writ Petition is hereby partly allowed.

2. The Judgment and Order dated 15.9.2017 passed by the Member, Maharashtra Revenue Tribunal, Bench at Aurangabad in Revision No.87/B/2001/Jalgaon, is hereby quashed and set aside.

3. Matter is remitted back with following conditions :-

   a] The Revision No.87/B/2001/Jalgaon shall be restored to its original position.

   b] Parties shall appear before the Tribunal on 22.12.2017 at 11.00 am.

3. Before 22.12.2017 on the basis of an authenticated copy of this order, the Tribunal shall call the Record from the Tahsildar, if it is sent back to him and heard the matter positively on 22.12.2017.

4. Writ petition accordingly disposed off. No costs.

**( V.K. JADHAV, J. )**

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*aaa/-*