

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6767 OF 2017

Moti Laxman @ Govind Pawar,
Age 41 years, Occupation Agriculture,
R/o Wadgodri Tq. Ambad Dist. Jalna. .. Petitioner

VS.

1. The State of Maharashtra.
2. Asst. / Dy. Director of Land Records,
Damadi Mahel, Behind Panchayat
Samiti, Aurangabad.
3. District Superintendent of Land
Records, Administrative Building,
IInd Floor, Jalna. .. Respondents

Mr. A. M. Gholap, Advocate and Shri G. C. Navandar,
Advocate for the petitioner.
Mr. S. B. Joshi, Assistant Government Pleader, for
respondents No.1 to 3.

CORAM : SMT. VIBHA KANKANWADI. J.

DATE OF RESERVING

THE JUDGMENT : 29-11-2017.

DATE OF PRONOUNCING

THE JUDGMENT : 20-12-2017.

ORAL JUDGMENT (Per Smt. Vibha Kankanwadi. J.)

1. Rule. Rule made returnable forthwith and heard learned advocates for the parties appearing finally, by consent.

2. The present petitioner is the original appellant who has invoked the extraordinary jurisdiction of this Court under Article 227 of Constitution of India with a prayer to quash order dated 30-09-2016 issued by respondent No.2 and to remand the matter to respondent No.3.

3. The factual matrix leading to the petition are that, the petitioner had applied for correction in the area in the revenue record of Gut No.197 of village Antravali Sarati Tq. Ambad Dist. Jalna on 23-04-2015. The said application was given to respondent No.2, who had thereafter made over the application to the respondent No.3 for its disposal according to law. Hearing was not given to the petitioner but the respondent No.3 directly informed the decision dated 20-08-2015 rejecting the application given by the petitioner. Thereafter, the petitioner preferred appeal under Section 247 of the Maharashtra Land Revenue Code before respondent No.2 with a specific prayer for remand of the matter to respondent No.3. When the petitioners'

Advocate went to the office of respondent No.2 for collecting the Humdast of the notice on 21-09-2015, he was informed that the appeal has been decided against the petitioner. Thereafter, the petitioner approached this Court by filing Writ Petition No. 2760 of 2016 challenging the said orders. The writ petition came to be allowed and after setting aside the order, this Court had remitted the matter to respondent No.2. The respondent No.2 in fact should have taken note of the reason quoted by this Court and ought to have remitted the matter further to respondent No.3. However, no such decision has been given. On the contrary it has been informed, without giving opportunity to hear to the petitioner again, that the appeal is dismissed. Hence, the petitioner has filed present petition.

4. The application has been objected by the respondents stating that, after perusing all the documents and hearing the arguments of both the sides, the appeal has been dismissed. Therefore, there is absolutely no necessity to reconsider the said decision.

5. In order to cut short I would like to say that, both the learned counsels have submitted arguments in support of their respective contentions.

6. It is to be noted that, the petitioner had filed an application stating that, the land Gut No.197 admeasuring 7-H 8-R situated at village Antravali Sarati Tq. Ambad Dist. Jalna should be measured and correct measurement should be shown in the record. It appears that, without giving an opportunity to the petitioner to putforth his say, the said application came to be dismissed. The appeal was preferred by the petitioner. At the time of disposal of the appeal also, the principle of natural justice were not adhered to, and therefore, the petitioner approached this court in Writ Petition No.2760 of 2016. It has been observed by this Court that, the impugned order in appeal is in flagrant violation of principles of natural justice, and therefore, the parties were relegated before the respondent No.2.

7. After the matter was relegated, it appears that, arguments on behalf of the appellant i.e. petitioner were advanced by way of written arguments through advocate. A specific point was raised and prayer was made that, since the present respondent No.3 had not given an opportunity of hearing to the petitioner, his order be set aside and the matter be remanded. However, it appears that, appellate forum i.e. respondent No.2 himself collected the documents and

disposed of the appeal. In affidavit-in-reply on behalf of respondents No.2 and 3, it has been stated that, the prayer of the petitioner in respect of correction of the land is without any merit as well as without any substance and cannot be considered under the relevant provisions of Maharashtra Land Revenue Code. There is absolutely no reason given in the said affidavit as to why a specific opportunity of hearing was not given. Mere submissions of written arguments does not amount to a proper hearing.

8. Furthermore, when it was brought to the notice of the appellate authority that, the authority before whom initially the application was made had not given an opportunity to the petitioner to produce documents or putforth his say, then the appellate authority ought to have merely sent back the matter for collection of evidence and submission by the parties. Collection of evidence cannot be said to be the job of the appellate authority; which has been in fact done in this case under the impugned order by respondent No.2. When respondent No.3 had not adhered to the basic principles of natural justice, the appellate forum ought to have remitted the matter for adherence of those principles. When authorities have not acted as per the law, under such circumstance the extra ordinary writ jurisdiction of

this Court will have to be invoked, and therefore, the writ petition deserves to be allowed. Hence, I proceed to pass following order.

ORDER

- 1) The writ petition is hereby allowed.
- 2) The impugned order dated 30-09-2016 passed by respondent No.2 is hereby quashed and set aside.
- 3) Respondent No.2 is directed to remit back the matter to respondent No.3 for its decision on application dated 23-04-2015 as per the law.
- 4) Rule is made absolute in above terms.
- 5) Petitioner to appear before respondent No.2 on 1st January, 2018.

**[SMT. VIBHA KANKANWADI]
JUDGE**

vjg/-.