

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.917 OF 2016

Sou. Manisha Rajesh Patil & Ors.

...Petitioners

Versus

The Tahsildar, Mahabaleshwar & Anr.

...Respondents

.....

Mr. Surel Sunil Shah for the Petitioners.

Mr. Manish Pabale, AGP for the Respondent Nos.1 and 2-
State.

CORAM : A.S. OKA &

SMT. ANUJA PRABHUDESSAI, JJ.

DATED: 20th FEBRUARY, 2017.

ORAL JUDGMENT (PER A.S. OKA, J.) :-

Heard the learned counsel appearing for the Petitioners and the learned AGP for the Respondents. Rule. The learned AGP waives service for the Respondents. Considering the narrow controversy involved in this Petition, forthwith taken up for final disposal.

2. The first two Petitioners are claiming to be the owners of the land bearing Survey No.27/5 admeasuring 0-H 80.25 Ares situated at Shindola, Taluka-Mahabaleshwar, District-Satara. The third Petitioner is claiming to be the owners of the land bearing Survey No.27A/2 admeasuring OH 80.25 Ares. The fourth Petitioner is claiming to be

the owner of the land bearing Survey No. 27 A/3 admeasuring O-H 80.25 Ares. The fifth and sixth Petitioners are claiming to be the owners of the land bearing Survey No.27 A/4 admeasuring O-H 80.25 Ares. The case of the Petitioners is that the Officers of Forest Department of the State Government prevented them from constructing a compound along the boundary of said lands. Therefore, the Petitioners applied to the Taluka Inspector of land records, Mahabaleshwar, a Survey Officer under the Maharashtra Land Revenue Code, 1966 (for short 'the said Code') for survey and measurement and for fixing the boundary of their lands. It is alleged by the Petitioners that on 16th and 17th May, 2013, the said Survey Officer carried out a survey after the notice to the Forest Department. It was realised after survey that the Forest Department has encroached upon the aforesaid lands. It is alleged that the Forest Department has not challenged the survey by preferring an appeal.

3. Four applications were made by the Petitioners before the Tahasildar, Mahabaleshwar invoking the exercise of the powers under section 135 read with 138 of the said Code. Section 135 confers a power on the Collector to hold a formal enquiry for deciding a dispute concerning a boundary of a holding. Section 138 of the said Code

confers powers on the Collector to summarily evict any land holder who is found to be in wrongful possession after the boundary dispute has been settled in terms of Section 135 of the Code. By a communication dated 18th February, 2015 the Tahasildar informed the Petitioners that a criminal case was pending before the learned Judicial Magistrate, First Class, Mahabaleshwar making allegations against the Petitioners of shifting of the boundary marks. The Petitioners were, therefore, informed that in view of pendency of the criminal case, the applications made by them cannot be entertained. It was stated that for same reliefs, the proceedings cannot be continued before the two Authorities. It appears that by a letter dated 14th January, 2015 an Officer of the Forest Department informed the Tahasildar not to issue any order as the criminal case is pending.

4. By this Petition under Article 226 of the Constitution of India, the Petitioners are seeking to challenge the said communication dated 18th February, 2015. A direction is sought for deciding the applications made by the Petitioners.

5. The learned counsel for the Petitioners submitted that for fixing the boundaries of the lands claimed by the Petitioners, a survey

was carried out by the Survey Officer in presence of Officers of the Forest Department. It was reported that the Forest Department has encroached upon the lands of the Petitioners. He pointed out that due to pendency of criminal case against the Petitioners, a Forest Officer informed the Tahasildar not to exercise statutory powers under Sections 135 and 138 of the said Code. He urged that the pendency of a criminal case is no ground to refuse to exercise the powers under the Code.

6. The learned AGP supported the impugned communication by contending that the issue of boundary of the forest land is involved in the pending criminal case.

7. We have given careful consideration to the submissions. A copy of survey map prepared by the Deputy Superintendent of Land Records, Mahabaleshwar is annexed to the Petition which shows the presence of the Officers of the Forest Department at the time of survey and measurement. By making applications on 15th February, 2014 the Petitioners sought adjudication of boundary dispute and consequential action of removal of encroachment by invoking statutory powers of the Collector under Sections 135 and 138 of the said Code. By no stretch

of imagination, in a pending criminal prosecution, a dispute regarding the boundary of any holding can be decided. Therefore, in our view, the Tahasildar has committed a serious error by informing the Petitioners that the applications cannot be decided till the disposal of the criminal case. Therefore, the impugned communication will have to be quashed and set aside and a direction will have to be issued for disposal of the applications made by the Petitioners.

8. Thus, we pass following order :

- (i) The impugned order dated 18th February, 2015 is hereby quashed and set aside;
- (ii) We direct that the Petitioners or their authorised representative to remain present in the office of the Tahasildar, Mahabaleshwar on 29th March, 2017 at 11.00 a.m. The Petitioners shall produce true copies of the applications dated 18th February, 2014 (BND cases bearing Nos.249 to 252 of 2015) made by them alongwith an authenticated copy of this order before the Tahasildar, Mahabaleshwar on that day;
- (iii) The Tahasildar, Mahabaleshwar shall examine whether powers of the Collector under Sections 135

and 138 of the Code have been delegated to him. If the powers are already delegated to him, he shall proceed to decide the aforesaid applications of the Petitioners in accordance with law as expeditiously as possible and in any event within a period of six months from the date fixed above. He shall not be influenced by the pendency of criminal case against the Petitioners.

(iv) If the Tahasildar finds that he is not delegated with the powers of the Collector under sections 135 and /or 138 of the said Code, he shall forthwith transmit the said applications being BND Case Nos.249 to 252 of 2015 to the District Collector. In such event, the District Collector shall decide the same within a period of six months from the date on which the said applications are received by his office;

(v) Rule is made partly absolute in above terms.

(vi) All concerned to act on an authenticated copy of this order.

(ANUJA PRABHUDESSAI, J.)

(A.S. OKA, J.)