

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1949 OF 2018
WITH
CIVIL APPLICATION NO. 5297 OF 2018
IN
WRIT PETITION NO. 1949 OF 2018

RASHID KHAN HAFIJ MOHAMMAD KHAN AND OTHERS
VERSUS
DR. GULAM RASOOL PAPAMIYA SHAIKH AND OTHERS

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Mr. R. R. Mantri h/f Mr. P. S. Pawar, Advocate for the petitioners.
Mr. R. L. Kute, Advocate for Respondent Nos. 1, 2, 3-A to 3-E.
Mr. Rohit R. Kakani, Advocate for the applicant in CA/5297/2018.

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CORAM : N. M. JAMDAR, J.
DATED : 17 DECEMBER 2018

PER COURT:-

1. On 29 November 2018 the following order was passed:

“ By this petition, the petitioners have challenged the order passed by the Divisional Commissioner, Nashik dated 28 September 2017 allowing the revision filed by the respondents/revision applicants under section 257 of the Maharashtra Land Revenue Code. After civil proceedings ended and decree was sent to carry out the actual partition, orders dated 20 December 2012 and 29 November 2011 were passed by the Tahsildar and the Collector, Ahmednagar, directing that the actual partition to be carried out in a particular manner.

2. *The learned counsel for the petitioners has taken me through the impugned orders. The impugned order firstly reproduces the arguments of the parties, thereafter, in the reasoning part the Commissioner has only reproduced earlier proceedings and has passed an order allowing the revision and setting aside the two orders. There is no iota of reasoning as to why revision is allowed and as to why these two orders were set aside. It is not a case of revision being rejected.*

3. *The Divisional Commissioner is under obligation in law has to give reasons as to why he was setting aside the orders. The Commissioner by virtue of section 257 is a revisional authority powers and exercise qua vested powers. Section 257 itself includes a proviso, which demonstrates that enquiry cannot be done in such a summary manner as has been done in this matter. The fact that the impugned order will have to be set aside and matter will have to be remanded to the Divisional Commissioner for fresh consideration. Suit was instituted in the year 1981 and yet actual partition has not taken place.*

4. *In the circumstances, the Divisional Commissioner ought to have shown seriousness in passing the impugned order. It is time that some discipline is inculcated. The Divisional commissioner will accordingly file an affidavit explaining the circumstances as to how an order without any reasons whatsoever was passed.*

5. *List petition on board for direction on 13 December 2018 to pass formal orders of remanding the proceedings to the Commissioner. Mr S B Pulkundwar, the learned AGP, who is present in the Court, states that he will inform this order to the concerned Divisional Commissioner, without awaiting for the copy of the order. Ad-interim order to continue till the next date."*

2. Reply affidavit is filed by Mr. Jotiba Tukaram Patil, the Additional Commissioner, Nashik, wherein he states as under:-

“3. I say and submit that, I have gone through the order passed by this Hon'ble Court dated 29.11.2018. I tender my unconditional apology for the displeasure expressed by this Hon'ble Court in order dated 29.11.2018. The Hon'ble Court is of the opinion that, the order impugned in this Writ Petition is not seems to be reasoned order passed by the deponent. I have gone through with the order passed by me once again and it transpires that, as expressed by the Hon'ble Court, the order is not with proper reasoning and finding written in the order passed by the deponent.

4. I say and submit that, while hearing RTS Revision No.81/2013, the deponent mentioned in the order, arguments advanced by the revisioner petitioner, the arguments advanced by the respondents in the Revision Petition. The deponent also have gone through with the record pertaining to the subject matter of the Revision Application. However, upon going through the contents of Revision Petition, averments in the reply filed by the respondents and upon going through the concerned record, the findings which ought to have been mentioned in the order dated 28.1.2017 are not properly mentioned.

5. I say and submit that, I realized the mistake committed by me while passing the order which as per the Hon'ble Court is not a reasoned order. I tender my unconditional apology for the mistake if any committed by me same may kindly be accepted, henceforth the deponent will take every care to pass reasoned order in every matter while/deciding as a quasi judicial authority.

6. I say and submit that, it is not deliberate act of deponent that the deponent has not passed reasoned order, once again I tender unconditional apology for inconvenience caused to this Hon'ble Court and deponent assures that, henceforth he will pass the reasoned order while acting as a Quasi Judicial authority."

3. The explanation is accepted but it is expected of the Additional Commissioner, who is vested with the quasi judicial powers, to pass a reasoned order, especially when such order adjudicates the rights of the parties. As already noted in the order dated 29 November 2018, the order passed by the Divisional Commissioner will have to be quashed and set aside and the proceeding will have to be restored to the file of the Divisional Commissioner.

4. The impugned order passed by the Additional Commissioner, Nashik dated 28 September 2017 is quashed and set aside. The R.T.S. Revision No. 81 of 23013 stands restored to the file of the Additional Commissioner. The Additional Commissioner will decide the revision application afresh on its own merits, preferably within a period of six weeks from today, subject to the earlier time bound commitments.

5. All contentions of the parties in pending revision are kept open. The interim order passed in this writ petition on 15 February 2018 as regards the suit property, to continue till disposal of the

revision.

6. Writ petition is disposed of accordingly.

7. As far as the pending civil application is cornered, in view of the disposal of the writ petition, it is not necessary to look into the merits of the same and the said application is disposed of.

(N. M. JAMDAR, J.)

rlj/