

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

WRIT PETITION NO. 6724 OF 2015

ANKUSH BAPUDEO GOJARE
VERSUS
STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioner : Mr. M. V. Salunke h/f V. D.
Salunke

AGP for Respondent Nos. 1 & 2: Mr. S. N. Kendre
Advocate for Respondent Nos. 3 & 4 : Mr G. V. Sukale

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CORAM: V. K. JADHAV, J.
DATED: 14th February, 2018.

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PER COURT :-

1. The petitioner is the original applicant in Rasta case and the learned Tasildar, Paithan has allowed the application and directed the respondents to open the cart way which is in existence from land Gut Nos. 196 & 195 leading towards land Gut No. 193 of the petitioner-original applicant. Being aggrieved by the same, respondent Nos. 3 & 4 preferred an appeal before the Additional Collector, Aurangabad and by order dated 31.07.2013 the Additional Collector, Aurangabad has disposed of the said appeal with the observations that the civil suit is pending between the parties and as such

it is not proper on the part of the revenue authorities to pass any order in the pending dispute. Aggrieved by the same, the present petitioner has preferred a revision before the Additional Commissioner, Aurangabad. Initially, by order dated 23.04.2014 the Additional Commissioner, Aurangabad has allowed the revision petition, setting aside the judgment and order passed by the Additional Collector and upheld and confirmed the order passed by the Tahsildar, Paithan. Respondent Nos. 3 & 4 filed Review Petition No. 157 of 2014 before the Additional Divisional Commissioner, Aurangabad pointing out therein that the order passed by the Additional Collector is final and the Additional Commissioner has no jurisdiction to entertain any appeal or revision against the order passed by the Additional Collector and the writ petition is the only remedy available. The Additional Commissioner, Aurangabad, Division Aurangabad by order dated 02.03.2015 has partly allowed the Review Petition with the specific observations that under section 257 of the Maharashtra Land Revenue Code, 1966 second revision

before the Additional Commissioner is not maintainable, but however, remanded the matter to Tahsildar, Paithan with a direction to conduct thorough enquiry into the case and give sufficient opportunity of hearing and giving evidence to all the concerned parties.

2. The learned counsel appearing for the parties agreed before this court that even though the learned Additional Commissioner has no jurisdiction to entertain the revision, passed the impugned order of remand.

3. It appears from the order passed by the Additional Collector that the learned Additional Collector has closed the dispute for the reasons that the civil suit is pending between parties. However, it appears that Regular Civil Suit No. 431 of 2012 came to be instituted on 10th December, 2012, which came to be dismissed on 6th January, 2017, whereas Regular Civil Suit No. 121 of 2013 came to be instituted on 02.05.2013. The learned judge of the Civil Court has allowed the application

Exhibit-5 in Regular Civil Suit No. 121 of 2013 and against the said order, the appeal preferred by the aggrieved party also came to be dismissed by the District Court in default.

4. In terms of the provisions of Section 26(b) of the Mamlatdar's Courts Act, 1906 there is bar of certain suits; when in respect of any removal of any impediment or of any dispossession, recovery of possession or disturbance of possession, that has been subject of previous proceedings, to which the plaintiff or his predecessor in interest was a party, under the provisions of Act of 1906 or in a civil court.”

5. In the instant case both civil suits as referred above came to be instituted after initiation of the proceedings before the learned Tahsildar under the provisions of the Mamlatdar's Courts Act, 1906. In view of the same, the bar u/s 26(b) of the Act of 1906 as contemplated does not operate. However, the learned Additional Collector has erroneously observed to that

effect and refused to entertain the revision.

6. In view of the discussion above, the order passed by the Additional Commissioner is required to be set aside as non-est and further the matter is necessary to be remanded to the Additional Collector to dispose of the same in accordance with the law on its own merits after giving an opportunity of being heard to both the parties. Hence, the following order.

ORDER

1. Writ petition is hereby partly allowed.
2. The order passed by the Additional Commissioner, Aurangabad Division, Aurangabad in Review Petition No.ROR/Review/157/2014 dated 2.3.2015 is hereby quashed and set aside.
3. The order passed by the Additional Collector, Aurangabad in Revision Application No.2013/Appeal/Mamlatdar/CR-7 dated 31.07.2013 is also hereby quashed and set aside and the matter is remanded with following directions :-

- a) Restore the Revision Application No. 2013/Appeal/ Mamlatdar/CR-7 to its original number.
 - b) The parties shall appear before the Additional Collector, Aurangabad on 27th February, 2018.
 - c) The Additional Collector, Aurangabad shall decide the said revision afresh after extending an opportunity of being heard to both the parties on its own merits in accordance with law within three months from the date of appearance of the parties.
4. Writ petition is accordingly disposed of. No costs.

(V. K. JADHAV, J.)

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vsm/-