

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7482 OF 2016
(Madhavrao Rukhman Kathole and others Vs. The State of
Maharashtra and others)

Mr.D.P.Palodkar, Advocate for the petitioners.
Mr.B.R.Sable, Advocate for respondent Nos.7 to 11 and 13 to 17.
Mr.U.B.Bondar, Advocate for respondent Nos.20, 23, 24 and 26.
Mr.S.K.Tambe, AGP for respondent Nos. 1 to 6.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 04/01/2018

PER COURT :

1. I have heard the learned Advocates for all the respective sides and have gone through the petition paper book with their assistance. Considering the order that I am to pass, I do not find that all the contentions of the litigating sides need to be adverted to.

2. The thrust of the petitioners' submissions are that they had sought one month's time in the proceedings before the Tahsildar on 05/04/2016 so as to be able to file certain documents and submit their written notes of arguments, keeping in view the purported litigation from 1958. As the matter was posted on 12/04/2016, the petitioners developed an apprehension that the concerned Tahsildar/ respondent Nos.4/29 was being partial towards respondent Nos. 20

to 27.

3. An appeal was filed by the petitioners u/s 247 of the M.L.R. Code before respondent No.28/S.D.O. Grievance is that intimation was given to the S.D.O. that this writ petition was filed in this Court on 17/06/2016 and the proceedings before the S.D.O. be adjourned. Despite the same, the S.D.O. has delivered his order on 31/05/2016 vacating the stay and then passed the order dated 28/06/2016 thereby rejecting the appeal.

4. Though the learned Advocate for the petitioners has tried to canvass strongly that the concerned Tahsildar and the S.D.O. are partial towards respondent Nos. 20 to 27, I do not find that the said contention deserves to be accepted since it is based on the ground that an adjournment for one month was not granted by the Tahsildar and the S.D.O. did not defer the hearing of the appeal on the ground that a writ petition was filed in this Court.

5. Notwithstanding the above, it appears that the petitioners were not heard when the impugned order was passed by the S.D.O. on 31/05/2016 and on 28/06/2016 when the appeal was dismissed as the petitioners were before this Court and desired a hearing in this

matter. This Court, by order dated 19/07/2016, has observed in paragraph No.4 "*in view of aforesaid submissions, it is expected that till further orders, the situation would not be allowed to be deteriorated any further by the respondents*". However, prior to the passing of this order, the appeal filed by the petitioners was already dismissed by the S.D.O. on 28/06/2016.

6. Considering the above, this petition is partly allowed only to the extent of setting aside the order dated 28/06/2016 and for remitting the proceedings to the S.D.O. so as to enable all the litigating sides to address the S.D.O. Learned Advocates indicate that if the matter is posted on a particular date before the S.D.O., they would all participate in the proceedings and assist the S.D.O. in deciding the appeal expeditiously.

7. As such, this petition is partly allowed. The order dated 28/06/2016 is set aside and Case No.Jav.Kr.2016/U.vi.Aa/Aar O Aar / Cee Aar-101/16 is remitted to the file of the S.D.O. Bhokardan, Dist. Jalna. All the litigating sides would appear before the concerned authority on 19/01/2018 at 3.00 p.m. Formal notices need not be issued by the S.D.O. All the litigating sides are at liberty to submit their written notes of submissions as well as

documents if so desired, on or before 31/01/2018. Thereafter, the S.D.O. would proceed to decide the appeal on or before 28/02/2018. He shall post the matter on a date of his convenience within the time frame for pronouncing his decision/order, which shall be so done on the said date in the presence of the parties.

8. The ad-interim protection granted by this Court on 19/07/2016 shall continue to operate till 28/02/2018 or till the decision of the S.D.O. in the appeal, whichever is earlier.

9. Considering the above order, the proceedings filed by the petitioners before the District Collector, Jalna dated 11/09/2017 and before the Divisional Commissioner dated 11/09/2017, shall stand disposed of and the said Authorities shall not consider the said representations in the light of the above order.

(RAVINDRA V. GHUGE, J.)