

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.10267 OF 2018
(Balaji s/o Mahadji Kadam Vs. The Additional Commissioner and
others)

Mr.A.R.Devkate, Advocate for the petitioner.
Mr.N.T.Bhagat, AGP for respondent Nos. 1 to 3.
Mr.R.K.Ingole, Advocate for respondent Nos. 4 to 7

(CORAM : Ravindra V.Ghuge, J.)

DATE : 22/10/2018

PER COURT :

1. The petitioner is aggrieved by the order dated 18/06/2018 passed u/s 257 of the M.L.R.Code concerning mutation entries, by which the Additional Divisional Commissioner has interfered with the order of the District Collector by which the Tahsildar Aardhapur had been directed to consider the application of the original applicant afresh u/s 5 of the Mamlatdars' Courts Act, 1906 (For short, the Act).

2. I have heard the learned Advocates for the respective sides. It is brought to my notice that the petitioner Balaji has also preferred RCS No.3/2016 for injunction and for protecting his agricultural land. I am also informed that the respondents Shivaji and others have filed a counter claim in the said suit. By order dated 24/09/2018, the Trial Court has rejected application Exh.35

preferred by Balaji and has declined injunction. An appeal is pending. In the meanwhile, all the litigating sides have executed an undertaking before the Trial Court on 01/03/2016 that they would not cause any obstruction to each other in Gat No.79.

3. I find a peculiar situation in these proceedings. Shivaji and others approached the Tahsildar, Ardhapur with a grievance that Balaji is creating an obstruction in the *wahiwat* in Gat No.79. Shivaji submits that this application was filed u/s 5(2) of the Act. By the order dated 21/03/2016, the Tahsildar directed the removal of obstruction.

4. Balaji approached the S.D.O. Nanded under the M.L.R.Code, 1966 invoking Section 247 of the Act. Apparently, the said proceedings were not maintainable since the issue before the Tahsildar was purely of removing an obstruction which the Tahsildar can legally order u/s 5(2). Balaji should have approached the Revisional Authority u/s 23 of the Act, who is commonly known as an S.D.O. Instead, Balaji approached the S.D.O. u/s 247 of the 1966 Code. His appeal was rejected on 15/06/2016. He then approached the Additional District Collector u/s 247 by way of a second appeal. The said authority delivered an order on 30/08/2016 directing the

Tahsildar, Ardharpur to reconsider the case strictly as per Sections 5 and 7 of the Act.

5. Shivaji and others approached the Additional Divisional Commissioner by preferring a revision u/s 257 of the M.L.R.Code. Further confusion is created by the Additional Divisional Commissioner vide the impugned order dated 18/06/2018 by setting aside the order of the District Collector dated 30/08/2016 and by closing the file.

6. It requires no debate that if a new way is to be created, an application has to be filed u/s 143 of the M.L.R.Code and thereafter the journey of the litigating sides would be u/s 247 and 257 of the said Code. If the grievance is only as regards removal of obstacles, such a case will have to be entertained u/s 5(2) of the Act and the Revisional Authority would then consider a revision u/s 23(2) of the said Act.

7. Considering the above. I find that the Additional District Collector had rightly considered the issue strictly in accordance with the provisions of Law. The Additional Divisional Commissioner has failed to consider the various provisions of the 1906 Act and 1966

Code. The impugned order of the Additional Divisional Commissioner apparently is passed without application of mind. The same is, therefore, quashed and set aside.

8. Normally this matter now should have been relegated to the Revisional Authority u/s 23 of the Act. However, after the Additional District Collector passed his order on 30/08/2016 remanding the matter to the Tahsildar u/s 5 and before the Additional Divisional Commissioner could deliver the impugned order dated 18/06/2018, which is now set aside, much progress was made by the Tahsildar u/s 5 and 7 of the Act. These litigating sides subjected themselves to a re-hearing procedure and have whole-heartedly participated in the said proceedings.

9. In these peculiar circumstances, I am not causing any interference in the order of the District Collector. As the Tahsildar has progressed in the matter with the co-operation of these litigating sides, it would be appropriate to permit the Tahsildar to take the matter to a logical end by passing a reasoned order after a complete hearing as is enunciated u/s 5 and Section 7 of the Act.

10. This petition is, therefore, partly allowed by setting aside the

impugned order of the Additional Divisional Commissioner dated 18/06/2018. The parties shall proceed with the hearing before the Tahsildar who shall pass a reasoned order u/s 5(2) of the Act as expeditiously as possible and in any case on or before 31/01/2019. The litigating sides shall appear before the Tahsildar, Ardhapur on 26/10/2018 at 11.00 a.m. Formal notices need not be issued.

11. Until then, the litigating sides shall abide by the *purshis* dated 01/03/2016 filed before the Trial Court in RCS No.3/2016.

(Ravindra V.Ghuge, J.)