

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

933 WRIT PETITION NO. 9457 OF 2018

WAJIDKHAN AJIJKHAN PATHAN AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...

Advocate for Petitioners : Mr.Kale Mahesh P.
AGP for Respondents: Mr. A.V. Deshmukh

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**CORAM : S.V.GANGAPURWALA
AND
SUNIL K.KOTWAL, JJ.**

DATE : AUGUST 14, 2018

O R D E R :

Issue notice to respondents. Learned AGP waives service of notice for respondents.

2. Mr. Kale, learned counsel for the petitioners submits that the petitioners have filed appeal before the Sub-Divisional Magistrate, Hingoli against the order of the Tahsildar issuing notice, however, the Sub-Divisional Magistrate has directed the petitioners to deposit 25% amount of the penalty.

3. The learned counsel submits that petitioners have not prayed for any stay of the execution of the order. In such a case, direction could not have been issued to the petitioners directing to deposit 25% of amount of penalty.

4. Mr. Deshmukh, learned AGP submits that petitioners had filed appeal. In view of that, the Sub-Divisional Magistrate has directed the petitioners to deposit 25% of the amount and the same is permitted.

5. The authority has got powers to direct deposit of 25% amount only if the petitioners are seeking stay and the authority has to pass order on the stay application. The reference can be had to Section 256 of the Maharashtra Land Revenue Code. In the present matter, the petitioners have categorically stated that they do not pray for stay of any order and they have filed appeal, which may be

directed to be decided on merits.

6. In absence of prayer for stay being made by the petitioners, the authority could not have invoked the provisions of Section 256 of the Maharashtra Land Revenue Code directing to the petitioners to deposit 25% amount.

7. In the light of above the impugned communication is quashed and set aside. The authority shall decide appeal filed by the petitioners on its own merits. At the time of passing final order in appeal, the authority can impose such of the condition as is permissible in law.

[**SUNIL K.KOTWAL, J.**] [**S.V.GANGAPURWALA, J.**]

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