

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

WRIT PETITION NO. 567 OF 2018

**BHAURAO NIVRUTTI SADAPHAL
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

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Advocate for the Petitioner : Shri Kulkarni Mukul S..
AGP for Respondents 1 and 2 : Shri S.K.Tambe.
Advocate for Respondents 3 to 6 : Shri Rahul R. Karpe.

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**CORAM: RAVINDRA V. GHUGE, J.
DATE :- 12th March, 2018**

Per Court:

1 The Petitioner is aggrieved by the impugned order dated 21.11.2017 passed by the Revisional Authority in Revision No.78/2017 under Section 23(2) of the Mamlatdars' Courts Act, 1906 by which, the said Revision has been allowed and the order dated 15.05.2017 passed by the Mamlatdar/ Tahasildar under Section 5(2) in Rasta Case No.20/2013 has been set aside.

2 I have considered the submissions of the learned Advocates for the Petitioner, Respondent Nos.3 to 6 and the learned AGP on behalf of Respondent Nos.1 and 2. With their assistance, I have gone through the petition paper book.

3 After considering the strenuous submissions of the learned Advocates, it apparent that the initial order has been passed by the

Tahasildar under Section 5(2) of the Mamlatdars' Courts Act, 1906. The Revisional Authority, while delivering the impugned order dated 21.11.2017, has concluded that the Tahasildar has not followed the due procedure as is laid down while conducting the enquiry for assessing whether, the Respondents before him have created obstacles or obstructions in the "Vahiwat". It is concluded by the Revisional Authority that no notice was issued by the Tahasildar to the adjacent land owners, no spot inspection was conducted, much less, in the presence of the parties and the proceedings were closed in the absence of the original Respondents.

4 It requires no debate that when a superior authority, exercising revisional powers, concludes that the authority below has not followed a particular procedure which was necessary to be followed and sets aside the order of the lower authority, the matter normally needs to be remanded to the lower authority for conducting the proceedings in a proper manner.

5 In the instant case, the Revisional Authority, on the one hand, concluded that the procedure was not followed by the Tahasildar and on the other hand, closed the file after quashing the order of the Tahasildar dated 15.05.2017.

6 The Petitioner herein preferred RCS No.144/2016 seeking an injunction against the Defendants in pursuance to the order of the

Tahasildar, which was earlier passed in Rasta Case No.20/2013. That order has been set aside in an earlier round before the Revisional Authority, inasmuch as, a subsequent order of the Tahasildar dated 15.05.2017 has also been quashed and set aside by the impugned order.

7 Considering the above, I find that the impugned order needs to be modified to the extent of remanding the proceedings to the Tahasildar under Section 5(2) of the Mamlatdars' Courts Act, 1906 for a fresh adjudication. The suit preferred by the Petitioner would, therefore, become infructuous.

8 The learned Advocate for the Petitioner submits, on instructions, that the Petitioner would withdraw RCS No.144/2016 and Miscellaneous Civil Appeal, if any, preferred for challenging the rejection of the application for temporary injunction by the Trial Court.

9 Considering the above, this Writ Petition is partly allowed with the following directions :-

- (a) The impugned order dated 21.11.2017 passed by the Revisional Authority is sustained to the extent of quashing of the order of the Tahasildar dated 15.05.2017.
- (b) The impugned order dated 21.11.2017 is modified by remitting Rasta Case No.20/2013 to the Tahasildar for a fresh adjudication under Section 5(2) of the Mamlatdars' Courts Act, 1906.

- (c) The litigating sides shall appear before the Tahasildar on 02.04.2018 at 11:00 AM and formal notices need not be issued.
- (d) The Tahasildar would issue notices to the adjacent land owners as is expected while dealing with such matters.
- (e) The Tahasildar would also conduct a spot inspection in the presence of the litigating sides and adjacent land owners and would prepare a spot inspection panchanama and a sketch map.
- (f) After considering the contentions of all the parties concerned with the matter, the Tahasildar would pass a reasoned order as expeditiously as possible and in any case, on or before 31.05.2018.
- (g) The litigating sides would not seek adjournments on unreasonable or trivial grounds before the Tahasildar.
- (h) The Petitioner would withdraw RCS No.144/2016 and Miscellaneous Civil Appeal, if any filed, from the respective Courts within a period of TEN DAYS FROM TODAY and the said Courts would dispose of the said proceedings as withdrawn.