

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5119 OF 2014

**Ganpati Bhau Naik/
Ganpati Kempanna Sadali**

..... Petitioner

VERSUS

The State of Maharashtra & Ors.

..... Respondents

Mr.G.N.Salunkhe for the Petitioner.

Mr.A.R.Metkari, A.G.P. for the State – Respondent nos. 1 to 5.

Ms.Sandhya Nanavare for the Respondent nos. 6 to 10.

CORAM : R.D. DHANUKA, J.

DATE : 8th JANUARY, 2018

P.C.

By this petition filed under Article 227 of the Constitution of India, the petitioner has impugned the order dated 19th March, 2014 passed by the learned Minister for Revenue dismissing the revision application filed by the petitioner and confirming the order passed by the learned Additional Commissioner, Pune, Division Pune and also confirming the order passed by the Additional Collector, Kolhapur.

2. A perusal of the record clearly indicates that by an order dated 11th January, 1984 passed by this Court in Writ Petition No.858 of 1979, this court had rejected the said writ petition filed by the petitioner and had permitted both the parties to lead such evidence as they deem fit including the final order if passed in the Reference proceedings arising out of civil suit. This Court held that it would be desirable that Tahsildar shall dispose of the enquiry within six months.

3. Instead of complying with the said order of remand passed by this court, the petitioner herein filed an application under section 59 of the Maharashtra Land Revenue Code. The learned Tahsildar decided the said proceedings against the father of the respondent nos. 6 to 10. The father of the respondent nos. 6 to 10 challenged the said order by filing an appeal before the Sub Divisional Officer. The said appeal was rejected by the Sub-Divisional Officer on 15th May, 1999.

4. The father of the respondent nos. 6 to 10 thereafter filed an appeal before the Additional Collector, Kolhapur who allowed the said appeal partly by an order dated 24th October, 2000 and was pleased to set aside the order dated 17th May, 1997 passed by the Sub-Divisional Officer and remanded the matter back to the Tahsildar to decide the matter afresh. It is not in dispute that the further proceedings filed by the petitioner came to be rejected by the Additional Commissioner and also thereafter by the learned Minister.

5. In my view, the learned counsel appearing for the respondent nos. 6 to 10 is right in submitting that in view of the earlier order passed by this court in the writ petition filed by the petitioner, the petitioner could not have invoked section 59 of the Maharashtra Land Revenue Code. The matter was already remanded by this court to the Tahsildar for further enquiry. The last two orders passed by the authorities are also on the same line which this court had earlier passed an order in writ petition on 11th January, 1984.

6. It is not in dispute that the petitioner is in possession of the

property in question. The rights of both the parties and the rival contentions raised by the parties can be considered by the learned Tahsildar independently. It is made clear that the learned Tahsildar shall decide the issue without being influenced by the observations made in any of the impugned orders. I, therefore, pass the following order :-

(a) The impugned order passed by the learned Minister and also the order passed by the Additional Commissioner, Pune and learned Additional Collector, Kolhapur are upheld. The matter is remanded back to the Tahsildar as directed in the impugned order.

(b) The learned Tahsildar shall decide the dispute on its own merits without being influenced by the observations made by the learned Revenue Minister as well as by the learned Additional Commissioner, Pune, Division Pune and by the Additional Collector, Kolhapur.

(c) The learned Tahsildar shall pass an appropriate order in accordance with law within six months from the date of communication of this order.

7. Writ petition is disposed of in the aforesaid terms. No order as to costs.

[R.D. DHANUKA, J.]