

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11047 OF 2017

Mr.Namadeo Trambak Gawali. ... Petitioner.
V/s.
Mohinuddin Naruddin Kadri and others. ... Respondents.

Mr.Bhushan Ulhas Deshmukh with Mr.Gajanan D. Shinde
for the petitioner.
Mr.Sandeep Shinde i/b. Ergo Juris for respondent Nos.1 to 8.
Mr.Y.S.Khochare, AGP for respondent Nos.10 and 11- State.

CORAM : A.S.OKA AND M.S.SONAK, JJ.

DATE : 10th October 2018.

P.C.:

On the earlier date, the parties were put to notice that endeavor will be made to decide this petition finally at the admission stage. We have heard the learned counsel for the petitioner and the learned counsel appearing for the respondent Nos.1 to 8 and the learned AGP for the respondent Nos.10 and 11. Considering the nature of order which we propose to pass, we are not issuing a notice to the respondent No.9.

2. A writ petition was filed by the respondent Nos.1 to 8 being Writ Petition No.13949/2016. The present writ petitioner had taken out Civil Application No.726/2017 in the said writ petition. The grievance of the respondent Nos.1 to 8 in the said writ petition was that an appeal

preferred by them before the State Government on 6th March 2013 was kept pending for a very long time. The said writ petition was disposed of on 27th March 2017 by passing the following order:

- “(i) We direct the petitioners in the writ petition to appear before the Appellate Authority on 17th April, 2017 at 3.00 pm. The petitioners shall produce an office copy of the Memorandum of Appeal as well as an authenticated copy of this judgment and order before the Appellate Authority;
- (ii) If the Appeal preferred by the petitioners on 6th March, 2013 is already disposed of, a copy of the order passed by the Appellate Authority shall be furnished to the petitioners or to their representative on the date fixed for appearance;
- (iii) If the Appeal is still pending, the Appellate Authority shall endeavour to decide the Appeal as expeditiously as possible and in any event within a period of three months from the date fixed for the appearance of the parties;
- (iv) Needless to add that the Appellate Authority shall give an opportunity of being heard to all concerned parties;
- (v) Civil Application No.726 of 2017 does not survive and the same is disposed of;
- (vi) The learned counsel appearing for the applicant in the Civil Application No.726 of 2017 makes a grievance that the applicant is not made a party to the Appeal. If according to the applicant, he is necessary and proper party, he can always make a proper application before the Appellate Authority which can be decided in accordance with law;
- (vii) All contentions on merits are kept open;
- (viii) Ad-interim relief granted by the learned Vacation Judge on 30th December, 2016 shall continue to operate till 29th April, 2017 to enable the petitioners to move the Appellate Authority for appropriate interim relief.”

3. The challenge in the present petition is to the order dated 31st March 2017 passed by the Hon'ble Minister of State for Revenue and Forest Department. Considering the prayers (c) and (d), though the challenge is to an order passed in appeal arising under the provisions of the Maharashtra Land Revenue Code, 1966 (for short "the said Code"), this petition will have to be heard by a Division Bench. One of the main contentions raised by the petitioner is that the impugned order dated 31st March 2017 passed by the Hon'ble Minister is antedated and as a result of passing an antedated order, the petitioner could not make an application for impleadment in the appeal preferred by the respondent Nos.1 to 8 as per the order of this Court dated 21st March 2017.

4. Considering the contention regarding the impugned order being backdated, we called for record. The photo copies of the relevant documents of record of the appeal are filed in the form of a compilation. It appears that the office of the Government Pleader, High Court, Appellate Side, Writ Cell communicated the order dated 21st March 2017 by a letter dated 23rd March 2017 addressed to the Chief Secretary of the State, the Hon'ble Minister and the Secretary of the Revenue and Forest Department. In fact, the said letter quotes the operative part of the order dated 21st March 2017 which we have reproduced above. The perusal of the file shows that there is a note dated 1st April 2017 which records that the appeal has been heard by the Hon'ble Minister of the State. It records that the decision of the Hon'ble Minister is forwarded along with the file and a direction has been issued by the Hon'ble Minister to issue the said

order. There are further notings of various officers of the State Government on the said document on 5th, 7th and 10th April 2017. The Roznama of the appeal shows that on 17th January 2017, the appellant and the respondent were present. It is recorded that they made submissions. It is further stated that the appellant should furnish detailed arguments within fifteen days and the Society should submit a report. The Roznama does not show that after receiving the report, the appeal was kept for further hearing. The Roznama does not record that on 31st March 2017, the appeal was taken on board and was disposed of.

5. In petition, in paragraph-16, it is stated that as per the directions of this Court, the petitioner appeared before the Appellate Authority on 17th April 2017 and filed an application, a copy of which is annexed as Exhibit-O. The averment made in paragraph-16 is that the petitioner was assured that the date of hearing will be informed to him. It is stated that in July 2017, the petitioner learnt that the Hon'ble Minister has passed an antedated order dated 31st March 2017.

6. In the file, there is nothing placed on record to show that on 17th April 2017 which was the date fixed for appearance of parties as per the order dated 21st March 2017, the parties were provided the copies of the order dated 31st March 2017. Clause (i) of the order dated 21st March 2017 specifically directs that a copy of the order, if already passed, shall be furnished to the parties on 17th April 2017. Perhaps this is the reason why the petitioner has made an allegation that the order is antedated inasmuch as if the order was really passed on 31st March 2017, the copies

of the said order would have been provided to the parties on 17th April 2017 as per the direction of this Court contained in clause (ii) of the order dated 21st March 2017. Page-30 of the file records a remark on a note that the order dated 31st March 2017 was forwarded on 12th April 2017 by a letter of the State Government. If this statement is correct, a copy of the order would have been provided to the petitioner when he appeared before the Appellate Authority on 17th April 2017.

7. Today, the learned AGP tendered across the bar a letter dated 10th October 2018 addressed to him by the Desk Officer of Revenue and Forest Department in which it is stated that the Hon'ble Minister has agreed to review the order dated 31st March 2017 and to pass a fresh order by giving an opportunity of being heard to the parties.

8. In the order dated 21st March 2017, it was provided that if on the date fixed for appearance of the parties it is found that the appeal is pending, the present petitioner was entitled to make an application for being impleaded as party to the pending appeal and the Appellate Authority was directed to decide the said application in accordance with law. If the petitioner is right in contending that the order was antedated, the same prevented the petitioner from taking benefit of the order dated 21st March 2017.

9. The letter dated 10th October 2018 is taken on record and marked "L-1" for identification wherein it is stated that the Appellate Authority has agreed to review its own order. We, therefore, do not think

it necessary to record final finding on the controversy whether the order dated 31st March 2017 is antedated. The learned counsel appearing for the respondent Nos.1 to 8 submitted that though according to the said respondents, the petitioner has no locus, the said respondents have no objection if the Hon'ble Minister rehears the appeal. We accept the statement.

10. The learned counsel appearing for the petitioner invited our attention to the impugned order. He submitted that according to the impugned order, hearing was concluded on 17th January 2017 but, surprisingly, the said order refers to the Government Resolution dated 11th January 2017. His submission is that the appeal should not be heard by the same Hon'ble Minister. It is not necessary for us to go into that contention. When the petitioner applies for impleadment, the petitioner can always make an appropriate prayer in that behalf which will be considered by the State Government.

11. Accordingly, we pass the following order:

- (i) The impugned order dated 31st March 2017 is hereby quashed and set aside and the appeal bearing No.RTS 3016/3447/C.N.151/J-6 is restored to the file of the State Government. We direct the petitioner and the respondent Nos.1 to 8 to appear in the office of the Revenue and Forest Department of the State Government at 3.00 p.m. on 22nd November 2018. On

that day, it will be open for the petitioner to make an application for impleadment as observed in the order dated 21st March 2017. It will be also open for the petitioner to file an application contending that the appeal should not be heard by the same Hon'ble Minister who has passed the impugned order dated 31st March 2017;

- (ii) The issue whether the petitioner is a necessary and proper party to the appeal is kept open. All objections of the respondent Nos.1 to 8 to such application are kept open which will be considered by the Appellate Authority in accordance with law;
- (iii) On the date fixed for appearance, the State Government shall inform the date of hearing to the parties;
- (iv) We direct the State Government to decide the appeal as expeditiously as possible and, in any rate, within a period of three months from 22nd November 2018;
- (v) The ad-interim relief which was granted vide order dated 30th December 2016 in Writ Petition No.13949/2016 and continued thereafter shall further continue to operate till the disposal of the appeal by the State Government;
- (vi) All contentions on merit are kept open;
- (vii) The writ petition is disposed of on the above terms.

(M.S.SONAK, J.)

(A.S.OKA, J.)